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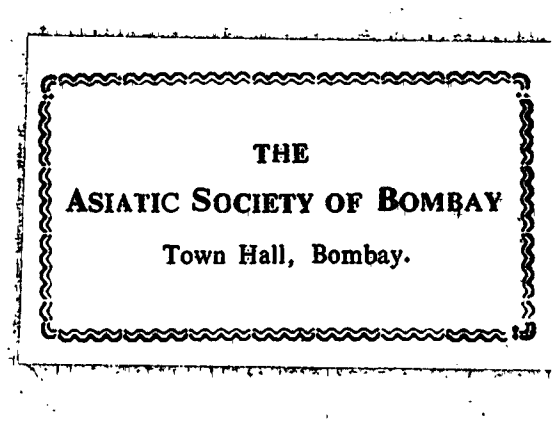

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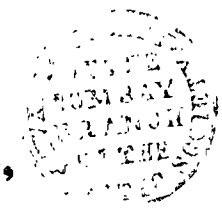
PROCEEDINGS OF THE COURT MARTIAL

HELD AT SIMLA

FOR THE TRIAL OF



CAPTAIN SCOTT JERVIS,

106*th* *LIGHT INFANTRY,*

106914

ON CHARGES FRAMED AT THE INSTANCE OF

GENERAL SIR WILLIAM ROSE MANSFIELD, K.C.B., K.S.I.,

COMMANDER-IN-CHIEF IN INDIA,

CONTAINING THE CASE FOR THE PROSECUTION.

1866.

SIMLA ADVERTISER PRESS.

1st DAY'S PROCEEDINGS,

Monday, 25th June 1866.

BRIGADIER GENERAL BRIND, C. B, *President.*

Members:

Colonel Glyn, C.B., Rifle Brigade.	Lieut.-Col. Barwell, A. A. G.
Colonel Scudamore, C.B., 7th Hussars.	Lieut.-Col. Hawthorn, late E. Lt. Cavy.
Colonel Carmichael, C.B., 94th Foot.	Lieut.-Col. McMullen, ditto.
Colonel Seymour, C.B., Queen's Bays.	Lieut.-Col. Agg, 51st L. I.
Colonel Willis, C.B., 38th Foot.	Major H. G. Delafosse, 101st Foot.
Colonel Hampton, Bengal Army.	Major H. E. Iremonger, A. A. G.
Colonel Carey, Bengal Army.	Major G. C. Hawkin, Brigade Staff.

Prosecutor:

Captain W. K. Elles, 38th Foot D. A. A. G.

Deputy Judge Advocate General.

Major J. N. Young.

Interpreter,

Major H. Le C. Moller, 101st Foot.

CHARGES.

Captain Ernest Scott Jervis, of Her Majesty's 106th Regiment (Bombay Light Infantry) placed in arrest, and charged as follows:—

FIRST CHARGE.—With having behaved in a scandalous manner, unbecoming the character of an Officer and a Gentleman, while employed as Aide-de-Camp in charge of the household expenditure of His Excellency the Commander-in-Chief, in the following instances:—

1st.—In having, at Mahasoo, during the months of September, October, and November, 1865, dishonestly mis-appropriated to his own use, and for the entertainment of his own guests, the following wines, beer, and other stores, of the aggregate value of Rupees 920-10-8, or thereabouts, the property of the Commander-in-Chief, intrusted to him, Captain Jervis, for expenditure on His Excellency's account only; that is to say:—

100 bottles of Sherry.	2 tins of Salmon.	1 bottle of Worcestershire Sauce.
2 bottles of Port.	3 tins of Oysters,	1 bottle of Capers.
61 bottles of Champagne.	2 tins of Sardines.	4 bottles of Mushrooms.
24 bottles of Sauterne.	1 tin of Giblet Soup.	1 bottle of Olives.
88 bottles of Claret.	3 tins of Sausages.	1 bottle of Apricots.
114 bottles of Beer.	1 tin of Pâte de foi gras.	4 bottles of Tart fruits.
1 bottle of Brandy.	3 tins of Truffles.	1 Jar of Plum Jam.
1 bottle of Maraschino.	4 tins of Asparagus.	1 Jar of Raspberry Jam.
1 bottle of Caracao.	2 tins of assorted Biscuits.	1 lb. of Tea.
67 bottles of Soda-water.	1 bottle of Vinegar.	2 lbs. of Coffee, and 1 loaf of Sugar.
6 bottles of Lemonade.	1 bottle of Mustard.	
1 tin of Ham.	2 bottles of Salad Oil.	
1 tin of Bacon.	1 bottle of Mixed Pickles.	
1 tin of Tongue.	2 bottles of Harvey Sauce.	

And having then, or subsequently, with intent to defraud the Commander-in-Chief, entered, or caused to be entered, the said articles in the account books of the household, in his, Captain Jervis' charge, as having been expended on His Excellency's account.

2nd.—In having, at Calcutta, in or about the month of February 1866, with intent to defraud the Commander-in Chief, charged, or caused to be charged, to His Excellency's debit, in the account books of the household, in his, Captain Jervis's charge, the sum of Rupees seven hundred or thereabouts, the same being the cost of his, Captain Jervis' own private table expenses at Mahasoo during the months of September, October, and November, 1865.

3rd.—In having at Calcutta, or Simla, or both these places, between the 16th of December 1865, and 25th of April 1866, dishonestly mis-appropriated to his own use, the following articles of stable necessaries and horse furniture, of the aggregate value of 275 Rupees, or thereabouts, ordered and received by him, Captain Jervis, from Messrs. Monteath and Co., of Calcutta, on

account and at the cost of His Excellency the Commander-in-Chief, and the property of His Excellency, that is to say:—

6 horse brushes.	6 rope reins.
7 horse blankets.	7 single heel ropes.
6 horse body rollers.	2 suits of horse clothing.
6 stall collars.	1 rosette and brow-band.

4th.—In having at Simla, in or about the month of April 1866, with intent to defraud the Commander-in-Chief, charged under the head of Bazaar expenses, to His Excellency's debit in the "Bazaar expenses" account book of the household, in his, Captain Jervis', charge, the sum of Rupess forty-seven and annas fourteen; the same being the cost of his, Captain Jervis' private expenses from the 25th to the 29th March 1866, inclusive, while en-route from Calcutta to Simla, and not in attendance as Aide-de-Camp.

2ND CHARGE.—With having at Simla, on the 14th of May 1866, neglected to obey the orders of His Excellency the Commander-in-Chief, communicated to him through the Adjutant General's Department, to produce before a Military Court of Enquiry ordered to investigate the accusations in the 1st and 4th instances of the first charge, certain books, accounts and vouchers, the property of the Commander-in-Chief, in his, Captain Jervis' possession, the production of which was essential to the clearance of his character as an Officer and a Gentleman.

3RD CHARGE.—With having at Simla, on the 22nd of May 1866, neglected to obey the order of His Excellency the Commander-in-Chief, communicated to him by the Military Secretary, to attend a Committee of Audit which had been assembled by order of His Excellency for the purpose of testing the accounts kept by Captain Jervis on behalf of the Commander-in-Chief, the said Committee having been ordered for the purpose of affording Captain Jervis an opportunity of relieving himself from the imputations on his character as an Officer and a Gentleman, contained in the 1st and 4th instances, of the 1st charge, with which, he, Captain Jervis, had been made acquainted at a Court of Enquiry held on the 14th May 1866.

By order of
His Excellency the Commander-in-Chief.

(Signed) H. E. LONGDEN,
Adjutant General.

ADJUTANT GENL'S. OFFICE,
Head Quarters, 14th June 1866.

Additional charge against Captain Ernest Scott Jervis, 106th Regiment, (Bombay Light Infantry.)

FOURTH CHARGE.—With having, at Simla, on the 9th of June 1866, he being at the time in Military arrest imposed by order of His Excellency the Commander-in-Chief, disobeyed the lawful command of his superior Officer, Colonel D. M. Stewart, Deputy Adjutant General, to deliver him his, Captain Jervis', sword.

By order of His Excellency the Commander-in-Chief,

(Sd.) H. E. LONGDEN, *Colonel,*
Adjutant General.

ADJUTANT GENERAL'S OFFICE,
Head Quarters, Simla, 20th June 1866.

True copy.

(Sd.) J. N. YOUNG, *Major,*
Depy. Judge Advocate General.

FIFTH CHARGE.—With conduct unbecoming the character of an Officer, and to the prejudice of good order and military discipline, in having, at Simla, on the 22nd June 1866, in a letter of that date written and sent by him, to the address of Colonel Longden, C.B., Adjutant General, made use of the following highly insubordinate expressions in regard to the orders of His Excellency the Commander-in-Chief, for his, (Captain Jervis') appearance before a General Court Martial:—

"In reply, I have the honor most solemnly and emphatically to protest against this proceeding, as unwarranted by law, principle or justice, and to state, with every respect to His Excellency, that nothing short of physical force will induce me to be present at the Court, and that if dragged there as a prisoner, by violent means, I shall take no part in the proceedings

save to reiterate before the Court my protest against the illegality and injustice to which I have been subject, and warn every member of the grave responsibility he incurs by consenting to take part in the proceedings."

PRISONER.—I have a few words to say with reference to the matter about to be brought before the Court. I respectfully represent to the Court, that I stand here under very peculiar, perhaps unprecedented, circumstances. I have come under protest and on compulsion. My protest embraces the whole proceedings employed against me from the first moment to the present time, and raises the question even of the lawfulness of this Court. The question is a grave and momentous question, and seriously affects every individual connected with it.

I have acted, I beg to assure the Court, on principle throughout, and not in any spirit of disobedience or contumacy.

PRISONER'S PROTEST AS RECEIVED AND RECORDED BY THE COURT.

PRISONER'S PROTEST AS RECEIVED, TO BE READ.

The same

I have, from the first commencement of the painful controversy which has led to the assembly of this Court Martial, persistently, and on principle, *protested* against the legality of the action taken by His Excellency the Commander-in-Chief, for the obvious reason that His Excellency is, in all and each of the original charges and imputations raised against me, to all intents and purposes, and beyond all contradiction, a *private prosecutor*, seeking the recovery of his private property, supporting the *[*evasion*] of his private debts, due to me on private accounts †[*and endeavouring to justify acts of injury, committed towards me, which have laid His Excellency open to heavy damages.*]

Ditto

Repudiation

† Expunged.

The same.

It is not in wanton or unreflecting disobedience, nor in disregard of my legitimate Military duty, but on the principle, distinctly recognized and clearly laid down in standard works on Military law, *viz.*, that it is, "lawful command of a superior," that I have throughout respectfully declined either to attend the Committee, or bring the accounts before the Court of Enquiry, and it is in maintenance of this principle, and in reliance upon these authorities, that I have ventured to decline to attend this Court, except upon compulsion, when I found that, in addition to the original illegality of the procedure, pleaded by me, the prosecutor, in violation of law ‡[*and justice*], had ordered my trial, while he refused to allow my witnesses to be summoned.

Ditto

Ditto

‡ Expunged.

The same.

I need scarcely remind you, Sirs, that such is the latest interpretation of the law on the subject of Military obedience, and that this interpretation is supported by many well known precedents: the *dictum* of Chief Justice Bushe, that "no subject of the King is bound to obey an illegal order, and if an Officer give an illegal order, those who obey him are not exempt," never having been contradicted.

Ditto

§ *Plea.*

I still, at this eventful crisis, persist in that §[*protest*], and desire, solemnly and emphatically to repeat it before the President and Members of this Court now assembled, entreating you, Sirs, to consider carefully, dispassionately, and on your consciences, without respect of persons, and in the fear of God, whether this be true or not, and whether, if it be, you yourselves are subserving the honor of the Army, the cause of true Military discipline, the interests of society, or the ends of justice, in consenting to use the powers committed to you for great public purposes, in aid of the private and personal objects of the prosecutor, whatever be his official rank—nay, rather, whether you are not yourselves incurring grave and indefinite responsibilities, if you participate in a procedure which may *eventually* prove to be unlawful—at all events, without previous, careful, and conscientious investigation of the whole question.

The same.

Ditto

Ditto

Ditto

But, Gentlemen, while I thus reiterate and press upon your attention, the ||[*Protest*] which I have consistently made throughout, and the

|| *Plea.*

¶ *Plea.* principle upon which it has been made, I wish also to add a special ¶[*Protest*] in regard to the proceedings which have taken place since the order for convening this Court has been issued.

The same. When I received intimation of this order, I submitted, according to universal custom, and to the rules of law, a list of my witnesses, whose evidence I declared, and hereby again conscientiously and truly declare, is *Ditto* necessary for my defence. Some of these Officers were formerly on the Staff of His Excellency, who superintended, as I have done, His Excellency's private expenditure, and who, when on their oath, will be com- *Ditto* pelled to disclose the system on which that expenditure has, for years past been regulated, and thus at once expose the impossibility of adducing charges against me while the household accounts are unclosed and incom- *Ditto* plete; while they, at the same time, prove that His Excellency has, for years past, sanctioned and maintained the very practices which he has laid to my charge.

Ditto But the prosecutor (himself the plaintiff, now personally interested ** Expunged. in achieving my ruin,) has assumed to himself the **[*arbitrary*] power of refusing to allow my witnesses to be summoned, or any steps to be taken The same. to ensure their attendance, thus securing, if you, Gentlemen, will tolerate such a procedure, in his own private and personal interests, an *ex-parte* †† *Defeat.* trial and seeking to accomplish his own triumph, and my ††[*ruin,*] while he deprives me of all possibility of rebutting his charges.

And the prosecutor has done this on the ground which he has The same. taken upon himself, in the absence of all enquiry, to *assume, viz.*, that those witnesses have been summoned for the purpose of defeating justice! Thus, in his own cause and for his own advantage, pre-judging my motives, ‡‡ Expunged. deliberately depriving me of my established right, ‡‡[*and converting this trial into an inquisition*]. Sirs, when a late Commander-in-Chief, Sir W The same. Gomm, was summoned as a witness for the defence of a Subaltern in one of Her Majesty's Regiments, His Excellency was himself, as witness, compelled to submit a respectful petition to the Court, praying the Court to satisfy itself that His Excellency's evidence was necessary, before it enforced his attendance—a course of procedure which shows that it is for the witness, not for the prosecutor, to raise such objection, and when raised, for the *Ditto* Court, and not the party interested, to decide upon it.

** I submit.* As it is, the prosecutor* has now taken the law into his own hands, *The same.* superseding the power and privileges of the Court. He has †[*arbitrarily*] *† Expunged.* impugned my motives, and overriding the declared duty of the Judge *The same.* Advocate General, which is "to summon the witnesses of both parties," he has deprived me of all means of defence, and has now ‡[*dragged*] me ‡*Forced.* before this Court to undergo what is called a trial, while he excludes, by §*Act.* his own §[*will*] the evidence which alone can make a trial aught but a ||*Plead.* mockery. I therefore solemnly and earnestly ||[*protest*] against this, as *The same.* against all the other proceedings of the Commander-in-Chief.

¶*Plead.* I ¶[*protest*] against it as an act subversive of the first principles *The same.* of justice, as utterly unwarranted by Military rule or the Articles of War.

I submit to you, Sirs, that to allow such an exercise of arbitrary *Ditto* power in any man in the world, whatever be his position, or whatever his rank, is to establish an irresponsible tyranny of the most dangerous kind *Expunged, **[*to render the Court Martial an object of contempt and ridicule throughout the world, and to do violence to those feelings of honor, justice, and fair-dealing, which Gentlemen and Officers must ever value above all earthly advantages, and are ever ready to call into exercise on behalf of the weak against the strong*]. *The same.* I call upon you, all, Gentlemen, to consider these things, and respectfully decline to take any part in the proceedings, save under protest, until the law is obeyed, and justice satisfied, by summoning my witnesses in due course.

Court closed, Court decided that the pleas urged by the prisoner must be disallowed, while it reserved to itself a discretion to take action in the matter of summoning witnesses hereafter. Prisoner was called on to plead Guilty, or Not Guilty, and pleaded "Not Guilty, under protest."

The case for the prosecution was opened by Captain Elles, in the following written address :—

Mr. President and Gentlemen,—Before submitting to you the evidence in support of the Charges on which the prisoner, Captain E. S. Jervis, of the 106th Bombay Light Infantry, stands arraigned, it will be necessary for me to allude to the train of circumstances which have compelled the Commander-in-Chief to take the painful course of assembling this Court to investigate the conduct of an Officer so lately a member of his private family, and possessed of his entire confidence and esteem. The events which immediately preceded the arrest of Captain Jervis on the present charges, are briefly these.—About the beginning of May last, the Commander-in-Chief had—for, in His Excellency's opinion, a sufficient cause in a matter connected with his (Captain Jervis') duties as Aide-de-Camp in charge of the household—deemed it necessary to inform that Officer that he dispensed with his services in future. The circumstances of the misconduct here alluded to, it is unnecessary to detail; indeed, it is not permitted to me, as prosecutor, to enter upon this matter, which is not included in the charges. Suffice it to say, that, for certain irregularities, Captain Jervis was removed from the Personal Staff, he being permitted to draw his pay as Aide-de-Camp up to the end of May, in order that he might have time to complete his accounts at his leisure, and render them in a manner satisfactory to himself and the Commander-in-Chief. His Excellency now thought the matter ended, but it came to his notice that Captain Jervis questioned the justice of his decision, and he therefore ordered a Special Court of Enquiry, composed of Officers unconnected with his Excellency's household, to hear the whole evidence in the matter, and to record an opinion whether the alleged misconduct, for which the removal of Captain Jervis from the Personal Staff had taken place, was sustained or not. The Court of Enquiry, the impartiality of which Captain Jervis has since impugned, was composed of the Deputy Adjutant General, Deputy Judge Advocate General and Deputy Quarter Master General, and the Court sat on the 10th and 11th May: Captain Jervis' removal from the Staff having taken place on the 7th. Captain Jervis at first declined to attend the Court, but on grave consequences of his refusal being pointed out to him, he at length consented to do so, without however, taking any part in the proceedings, or offering any explanation of the matter, under enquiry. To complete the record of this introductory matter, it may be said the Court ratified in the fullest sense, the Commander-in-Chief's decision, thereby justifying his military action in removing Captain Jervis from his Staff. The circumstances of the case up to this time, although necessary as an introduction, have been recorded in general terms as foreign to the matter now before the Court, and it being inadmissible to adduce evidence in their support, I now come to the events which form the subject of the present charges. It was about the time of sitting of the Court of Enquiry on the 10th and 11th May, that some of the matters mentioned in the first charge were brought to the Commander-in-Chief's notice. The *prima facie* case seemed to be so strong, and Captain Jervis' conduct had been such previously, that His Excellency saw the necessity of submiting the said matter to be investigated by the Court of Enquiry, which had adjourned its proceedings on the 11th May. The case for investigation was this: It suddenly transpired in His Excellency's establishment, that certain occurrences had taken place last autumn, and during Captain Jervis' late journey from Calcutta in March, which threw a grave suspicion on his honesty. After his return from Calcutta to Simla, His Excellency was anxious to see his accounts, as he was conscious that, for sometime past, these matters had entirely escaped his attention. Captain Jervis, in reply to a request to submit them, wrote to Sir William stating that all the house books were complete *to date*, the two last words being underlined. This note is dated 20th April. Sir William being much occupied, requested Lady Mansfield to be good enough to examine the accounts, and an application was made to Captain Jervis to submit them. In reply he wrote as follows on the 24th April :—

"I will complete a statement such as you would like to see, when the boxes, with the accounts, bills &c., arrive, and let you see it." Both these notes will be laid before the Court. The discrepancy between the statements was not observed at the time, but when viewed in the light of subsequent events, it came to be suspected that there might be unwillingness on the part of Captain Jervis to produce his accounts, gradually the suspicion was developed into a conviction, and at length, as one matter after another came to light, it became painfully evident that a fraud had been committed. It was known that, in the months of October and November last, Captain

Jervis was living at Mahassoo, in a house, the property of Lord William Hay. In fact, this was his residence, the greater portion of his time being spent there, except when in actual attendance on the Commander-in-Chief. Captain Jervis, on several occasions, entertained his friends at Mahassoo, the parties in some instances amounting to twelve or fourteen persons. On one or two occasions he was joined in giving these entertainments by Captain Harbord, also an Aide-de-Camp on His Excellency's Staff. It now transpired that the supplies for these entertainments were sent out from the Commander-in-Chief's cellars and store rooms, and that the table was provided by His Excellency's Khansamah. The cellar and store-books showed that large expenditures of wines and stores were entered against dates on which no large entertainments had been given at the Commander-in-Chief's house. The Abdar, who was at that time in charge of the cellar and kept the key, deposed to large quantities of wine and beer, &c, having been sent on various occasions to Mahassoo by Captain Jervis's orders. These facts will now be proved by the testimony of the Abdar and Khansamah, and there is abundance of corroborative evidence in support of the truth of their statements. It will be shown that there had been no acknowledgement on Captain Jervis' part of these wines and stores having been taken for his own use, and that he expressed no intention of making any refund on their account either in money or in kind. It will be shown also, that the large quantities of wine sent out to Mahasso have not been written off in the books, and that the expenditure did not therefore purport to be on account of the Commander-in-Chief. On the other hand it will be seen that, on the 2nd and the 4th October, there are entries of consumption which it was impossible could have taken place on His Excellency's account, and of which no satisfactory explanation has been obtained. Captain Harbord will depose that, in October last a Cheque for Rs. 220 was drawn by him in favour of Captain Jervis, and appropriated by the latter on account of his, (Captain Harbord's) share of the Mahassoo entertainments, and it will be seen on examination of the cash account, closed up to the end of November, that no corresponding credit was made to the account of the Commander-in-Chief. This cash account, purporting to be a complete account for the three months September, October and November was the only book produced to the Court of Inquiry by Captain Jervis on the 14th May last. The entries in his book shew no refund on account of any of the matters treated of in the first charge. An examination of the house books too, which were stated on the 20th April to have been made up to date, will show that no refund in kind has taken place on account of wines and stores used at Mahassoo.

It will be proved to the Court by the evidence of Sir William Mansfield, whom I shall take the liberty of calling to speak to these facts, as also by that of the officers of the Personal Staff, that the use of wines and stores, such as that now adduced by the Officer in charge of the household, was not only wholly unauthorized, but was contrary to the established custom of His Excellency's Staff, and that no such practice had ever before been heard of.

In support of the second instance of the first charge, the Khansamah will depose that the bill for the table supplied by him at Mahassoo was kept in separate account; that this account remained unpaid for a considerable time; and that, in the month of January or February, shortly before his dismissal at Calcutta, he, by direction of Captain Jervis, included this cost, together with sundry other expenditure on Captain Jervis's private account, in the general bills submitted on account of His Excellency the Commander-in-Chief.

With respect to the third instance of the first charge, it will be proved that large quantities of horse clothing and stable gear were ordered by Captain Jervis from Messrs. Monteith and Co., during the course of last winter, in the name of the Commander-in-Chief: that these orders exceeded the requirements of the Commander-in-Chief's horses; that portions of the clothing he received were used by Captain Jervis for his own horses and retained by him. It will also be shown that no refund has been made, and that no intention to make a refund has been expressed to any one connected with the Commander-in-Chief. On *the contrary* when relieved by Major Gordon of his charge of the stable in April last, Captain Jervis informed that officer that a large bill was due to Messrs. Monteith and Co., but without the slightest intimation, either directed or implied, that any of the articles—which he knew would be included in this bill, they having been ordered by him in the Commander-in-Chiefs' name—had been acquired from the tradesmen for himself or appropriated to his own purposes.

With regard to the fourth instance of the first charge, it will be proved by the evidence of Steward Abbey, that Captain Jervis and he travelled up to Simla together from Calcutta, but not in attendance on the Commander-in-Chief. That he (Abbey,) paid the hotel bills and other small sums on the road, including Captain Jervis' own expenses. On arrival at Simla, Abbey

asked Captain Jervis how these sums were to be charged, and received a distinct order to enter them in the house books of the Commander-in-Chief as "bazaar expenses."

The several entries on the corresponding dates are accordingly made in a book which will be produced to the Court, and it will be seen that Captain Jervis' initials are affixed as a voucher of correctness of these items. To complete the evidence on this instance, it will be seen that such a practice was not only unauthorized, but was totally opposed to the custom of His Excellency's Staff. On the contrary, it will be shown that, on various occasions lately, the Adies-de-Camp have paid their own hotel expenses, even when in actual attendance on the Commander-in-Chief; the expense of their dinner alone, when dining with the Commander-in-Chief, being defrayed by His Excellency. The circumstances of the present authorized charge to the Commander-in-Chief forbid the belief that any refund was intended. This will complete the case in support of the first charge. Each individual instance, when viewed separately, must be regarded with grave suspicion; but the strange concurrence of facts in every department of the household under the prisoner's charge afford so remarkable and complete a proof, as to shut out, when regarded in conjunction, the hope that might have been admitted in a solitary instance of the possible absence of dishonest intention. Thus, in the case of the wines and stores alone, should no disproof of the allegation be offered, the Court might be willing to admit an assurance on the part of the prisoner that no fraud was intended. But then there would remain the matter of the Khansamah's bill, the horse clothing, and the hotel bills. The absence of intention which might have been urged in a single instance, it becomes impossible to accept in all.

In the second instance, viz., that of the Khansamah's bill, the presumption is so strong as to be almost conclusive of guilt. There is a maxim of law, to the effect that all presumptions may be legitimately made against one who withholds or destroys evidence. Now, in this case, not only is the evidence necessary to prove his innocence withheld by the prisoner, but it will be shown that this evidence, namely, all the Khansamah's vouchers and papers, including Captain Jervis' own notes of hand, the property of the Khansamah, and required by him for his own protection, were seized by the prisoner and have never been restored. Again, the presumption of guilt in withholding the papers which the prisoner was repeatedly ordered to produce to the Court of Inquiry, became greatly aggravated when it is considered that these papers are actually the property of the Commander-in-Chief, and that the prisoner has no legal right to them, and detains them in defiance of all authority. These facts, taken in connection with the implicit confidence placed in his late Aide-de-Camp by the Commander-in-Chief, the very cursory and superficial examinations it was his custom to give to his accounts, and the opportunity of misappropriation thus afforded, must inevitably lead to the conclusion that nothing short of actual fraud was intended, as well as committed, by the prisoner.

The evidence in support of the second and third charges, it is unnecessary to detail. In each case the delivery of the order will be proved, as also the failure on the part of the prisoner to comply with it.

The fourth charge will be proved by the Deputy Adjutant General, whose lawful command to deliver up his sword was directly and distinctly disobeyed by the prisoner. The circumstances of the interview between Captain Jervis and Colonel Stewart, who proceeded in person to the prisoner's quarters to repair the omission to demand the sword when first placing him under arrest, will be given to the Court; and Major Innes, who was called by Captain Jervis as a witness of the interview, will appear to depose as to what occurred on the occasion.

The evidence that will be adduced in support of the fifth charge needs no explanation.

Such, Gentlemen, is an outline of the evidence on which the case for the prosecution rests, and which the Commander-in-Chief, after due deliberation, has determined to submit to a General Court Martial. Up to a late date, it has been the earnest hope of the Commander-in-Chief, that the acceptance, on the part of the prisoner, of the repeated opportunities afforded him of clearing his character, would have enabled His Excellency to dispense with the services of a General Court Martial. Grave as were the imputations against the prisoner, it was *possible* that they might admit of explanation. Could it even have been shown that indiscretion alone had been committed, that the irregularities complained of had not arisen out of fraudulent intention, the Commander-in-Chief, in consideration of the long continued friendly relations with his former Aide-de-Camp, would have gladly allowed the matter to rest without recourse to a public tribunal. These were the feelings that prompted His Excellency to repeat, in more than one form, the opportunity, accorded to every officer who stands charged with a mili-

tary offence, of relieving himself of the imputation against him. It is, of course, open to the accused on appearing before a Court of Inquiry, either to offer an explanation of his conduct or to intimate that he reserves his defence for a Court before which the evidence shall be given upon oath. But it is not permitted to an Officer to call in question the authority of his Commanding Officer, whoever he may be, to investigate before a Military Court such portions of his conduct as are alleged to be in breach of the Articles of War. Had the prisoner complied with the order to produce to the Court of Inquiry the books and accounts of the Commander-in-Chief, or had he come to the Committee subsequently formed, and offered the explanations required by that Committee, it is possible that the present trial might have been avoided. Had there even been found, in the few books now in our possession, the slightest sign that any recovery was to be made on account of the abstracted property, prosecution for scandalous conduct might not have taken place. Although His Excellency would have deplored the great irregularity with its consequent misconstruction to the disfavour of the prisoner, he would have been only too willing to have accepted the slightest pencil mark as evidence of an honest intention. But the Court will readily see that, in the absence of any explanation of the alleged dishonest conduct, and in the continued refusal of the prisoner to offer any explanation, there was no option left to His Excellency as to the course he was at liberty to pursue. Although the Commander-in-Chief might have wished to pass over in silence the misconduct of a former member of his Staff,—although it might have saved him much trouble and annoyance to dismiss the report unnoticed,—it is clear that his duty prevented him from permitting an Officer resting under the imputation of dishonest conduct, to rejoin his Regiment until the charges against him had been cleared up in a satisfactory manner. But, in fact, no possible solution of the prisoner's conduct has presented itself, and the perfect concurrence of the evidence, from all the various courses, forbids the admission of any hope that such can exist. It has become impossible to avoid the conclusion that fraud has been committed, and it is thus the imperative duty of the Commander-in-Chief to bring the prisoner to trial. With regard to the tribunal by which the charge should be tried, His Excellency was advised that it was competent for him to adopt one of three courses.

Firstly, to submit the matter to a Civil Court on a Criminal Breach of Trust.

Secondly, to arraign the prisoner before a General Court Martial on a Criminal Charge, under the 100th Section of the Mutiny Act, and

Thirdly, to frame a Military Charge for scandalous conduct, unbecoming the character of an Officer and a Gentleman, to be tried by a Court Martial.

In selecting the latter course, the Commander-in-Chief, being the person affected by the prisoner's alleged misconduct, has been guided by the unanimous opinion of his Military advisers, and he has, according to the power with which he is vested, restricted the charge within the limits of a purely Military offence. The issue of this charge is clearly defined. It is alleged in the preamble, that the prisoner has been guilty of scandalous conduct, unbecoming the character of an Officer and a Gentleman. If, after a due consideration of the evidence in support of the several instances, you find that the allegation is proved, the sentence prescribed by the 79th Article of War, is that the prisoner shall be cashiered. The law permits of no option to the Court. The Commission of an Officer, convicted of fraud, is thereupon forfeited, it being clear that he could not be permitted to rejoin his Regiment, and associate on equal terms with Officers and Gentlemen.

The second and third Charges have arisen out of the neglect of the prisoner to comply with the orders duly communicated to him, to produce, in the *first* place, the books and accounts of the Commander-in-Chief, to the Court of Inquiry, such being necessary for the clearance of his character from the imputation of dishonesty; and in the *second* place to attend the Committee of Audit in order that he might be asked to afford the explanation required by them. The issue of these two charges is, whether an Officer, who has repeatedly disobeyed orders issued to him in strict accordance with Military law and usage, to enable him to clear his character before recourse is had to such a tribunal as this, has not been guilty of such absolute insubordination and disobedience of orders as to show that, on such account alone, his dismissal from Her Majesty's Service is required for the due consideration of Military Authority, according to the Mutiny Act, and Articles of War.

The fourth and fifth Charges would appear to put the seal to the prisoner's determined contumacy and disobedience of lawful Military Command. It is, of course, well known to all the Officers of this Court, that it is the long established custom of Her Majesty's Services, both

in the Army and Navy, to require the surrender of an Officer's sword when he is placed in arrest, such surrender being the outward sign that he is no longer in the performance of Military duty, but awaiting trial, or such other disposal as may be ordered by his Military Commander.

It may be that the point of fact of demanding the surrender of a sword is a matter of little consequence, but the circumstances of the interview of the Deputy Adjutant-General with the prisoner are of great importance, as being declaratory of his intention and determination to deny the force of Military authority and the obligation of lawful Military Command, whatever orders may be given and whatever their occasion.

The nature of this conduct is again seen still more strongly in the refusal of the prisoner to be tried. Supposing him to be absolutely innocent of the charges alleging fraud, this does not afford the slightest excuse for an example of contumacy and disobedience of lawful command, which is probably without parallel in the history of the British Army.

His Excellency Sir W. Mansfield, K.C.B., K.S.I., Commander-in-Chief in India, sworn and examined.

Q.—How long has Captain Jervis been your Aide-de-Camp?

A.—For some years.

Q.—How long has he had charge of your household account?

A.—From 1st September to 30th April.

Q.—Was he in charge of all the accounts, books, &c.?

A.—Yes, I may mention that some important old account books were discovered yesterday, that I had thought were in Captain Jervis' possession.

Q.—Did he undertake these duties as Aide-de-Camp?

A.—Yes.

Q.—Did Captain Jervis ever place on record an acknowledgment of his duties as Aide-de-Camp?

A.—Yes.

Q.—Did your Excellency consider these Military duties?

A.—Certainly.

Q.—Why?

A.—When I first came to Simla, I drew up a set of Rules for the guidance of my Staff. I made Major Flood, my Military Secretary, Commandant, to settle any matters of petty difference which might arise, in order that I might be saved all unnecessary trouble, and I was informed that all my Staff had seen these Rules. I have them here, and will make them over to the Court, to be read, if desired.

MEMORANDUM.

The Military Secretary will exercise the duties of Commandant of Head-Quarters. All applications for leave of absence, arbitration with regard to differences, and generally what comes under the head of discipline, in the Commander-in-Chief's household, as affecting the gentlemen composing it, are to be referred to him.

The Military Secretary will not, in general, interfere between the Officer who has charge of the domestic arrangements, and the servants or orderlies; but in case of complaints from the latter on account of striking, or ill-treatment, the Military Secretary will have the goodness to examine into them, according to their merits, as is done by the head of a Department in such matters.

The duties of the Aides-de-Camp will in future be regulated as follows:—

1. There will be one Aide-de-Camp in waiting, daily, who will always be dressed in uniform, and will remain on the premises, till the Commander-in-Chief goes out in the afternoon.

2. One Aide-de-Camp, specially named by the Commander-in-Chief, will take charge of the household affairs.

3. One Aide-de-Camp, also to be named, will take charge of the Stable.

4. When Lady Mansfield is in India, any hint which she may give with regard to matters connected with the establishment, leaving of cards, reception of visitors, &c., &c., is to be received as if it were an absolute order from the Commander-in-Chief.

5. The Commander-in-Chief, unless he may give a special direction, does not require personal attendance beyond the premises. Whenever he may require such personal attendance on the part of an Aide-de-Camp, the latter is to be in uniform, with sword, &c., or as may be directed by the Commander-in-Chief. This is quite irrespective of the dress the Commander-in-Chief may wear himself.

6. Whenever Lady Mansfield may require the personal attendance of an Aide-de-Camp, the latter is to be in uniform.

7. On the line of march, the Personal Staff will all be in uniform, unless they leave the road for the purpose of walking or for sport.

8. When travelling in Railways, it is expedient that the Personal Staff should also be in uniform, because of its happening so often that the Commander and other Officers of Stations come to meet His Excellency on the occasion of his arrival or departure.

9. At large dinner or other parties, the presence of the Aides-de-Camp is expected as a rule. At evening parties and receptions, all must, of course, be present.

10. Otherwise it is only necessary that the Aide-de-Camp on duty should be present at dinner, though the Commander-in-Chief is always glad to see Aides-de-Camp at table.

11. Whenever the Commander-in-Chief goes to a State dinner at the Governor General's, or to any other party, if an Aide-de-Camp is asked, without being named, the Aide-de-Camp on duty will attend His Excellency. Should an Aide-de-Camp be named personally, he will go instead of the Aide-de-Camp on duty. On the occasion of State Balls at Government House, or elsewhere, it is expected that the whole of the Personal Staff will avail themselves of the invitations afforded them. They should time their arrival so as to enter the rooms of the host as the suit of His Excellency: at Simla the Personal Staff can follow the usual custom of the place with regard to plain clothes, but in all other stations they are expected, generally, to wear uniform. The dinner dress at the Commander-in-Chief's table is the Military Undress, except on full dress occasions, of which due notice is given.

12. The Commander-in-Chief expects that his Personal Staff will not give in to the temptation of high play.

The post of an Aide-de-Camp is not a very easy one to fill well. The duties are, for the most part, light and of a social character; yet if they be not performed with care and exactness, discomfort and misunderstanding are sure to follow. An Aide-de-Camp is at the same time in the position of an Officer obeying instructions, and looking after the interests of his Chief, and also of a guest. It is most desirable that the latter part of the character should never be forgotten for a moment. Thus, whenever the master and mistress of the house enter a room, it is customary for the expectant guests and the sons of the family to rise, even though they may have sat down to dinner.

This, and other forms of social ceremony, cannot be too carefully attended to in a Military household.

The greatest courtesy must be practised by all members of the Personal Staff towards the guests of the Commander-in-Chief and Lady Mansfield. Pique on the part of a member of the Staff towards their guests cannot be permitted. When, unfortunately, feelings may prevail rendering the matter difficult, the Commander-in-Chief must ask his Staff to recollect that what is here inculcated is an indispensable duty with regard to their position.

Subject to the rules of politeness, which have been indicated, the Commander-in-Chief wishes the whole of his Staff to be as much as possible on the footing of a well-ordered family.

(Signed) W. R. MANSFIELD, *General,*
Commander-in-Chief in India.

Umballa, 30th March 1865.

Q.—Have you been in the habit of examining your accounts carefully?

A.—No, I have not.

Q—When did you last examine your accounts?

A.—I don't think I have had any accounts from the prisoner for the last six months, except those contained in a book produced before the Court of Inquiry. He has once or twice shown me books, but I did not examine them, merely looked at an item or two to which he directed my attention.

Q.—Would the information given have enabled you to detect any irregularities?

A.—No, not unless my suspicions had been previously aroused.

Q.—Was the prisoner always treated by you with confidence?

A.—Yes.

Q.—What was your impression with regard to the way in which your household duties were conducted?

A.—My impression was that they were conducted in a proper and economical manner.

Court adjourned at 4 P.M., till 11. A.M., on Thursday 26th June 1866.

In charge
Treatment of A.D.C. by other Servants
Memorandum.

Herbert —
Consequences such
Contempt of Court —
official tyranny
personal malice
a social disgrace — nature

Duties of an A.D.C.
not menial.

IInd DAY'S PROCEEDINGS.

Court re-assembled at 11 A.M., *on Tuesday* 26*th June*, 1866.

PROSECUTOR.—Sir W. Mansfield will be re-examined on his former oath.—(*Prosecution continued.*)

Q.—After your Excellency arrived in Simla, did you examine your accounts?

A.—I wished to examine them, but had not the opportunity.

Q.—Will your Excellency state how you had not the opportunity?

A.—I wrote a letter on the 19th April to the prisoner, asking him for the accounts; I received an answer from him dated 20th April, which I produce:—

"MY DEAR SIR WILLIAM,—All the house books are complete to date. At any time that you would wish to go over them, I shall be happy to attend on you for the purpose. The general statement of accounts you have seen to a recent date; the other shall be completed, and shown to you very shortly.

"There is full work for one clerk in the establishment; I would gladly learn from you that one had been told off for the duty. I could not hold out a hope that Abbey will be able to continue to act as clerk, as well as do his other work. Attention to the one duty can only be given by neglecting the other.

"*The books, which you can see at a moment's notice, will convince you that everything is right.*—

Very truly yours,
(Signed.) SCOTT JERVIS.

20*th April* 1866.

The day after receiving that, I wrote a short Memorandum for future guidance, in which I said that Lady Mansfield would, in future, consider and examine the books of accounts, and to the best of my recollection laid down some rules to guarantee regularity in the rendering of the accounts. [*Memo. produced.*] The original of this Memorandum was sent to the prisoner, its date is 21st April, it is a true copy. Those are my initials.

COURT.—This copy has been put in by the Commander-in-Chief, do you wish to produce the original?

PRISONER.—No!

"MEMORANDUM.

"Lady Mansfield will examine the books at her leisure.

"I do not know why the old custom has been allowed to drop through of a monthly abstract of expenditure for my information; I think it had better be renewed, commencing with the current month I think further, it will be advisable that the actual expenditure under the following heads should be included in the monthly draft of cash:

"Butler's and Kitchen Bazaar Bills. | "Wages. | "Stables.

"All accounts kept by bills with tradesman should be settled monthly by cheque from me, the bills being presented to me for settlement with the monthly abstract, in which they can be entered as paid. The object of this is to ensure, if possible, what I have always asked for, but have never quite been able to accomplish, viz., that I may have no bills running up with which I am unacquainted, *e. g.*, the Bill of £640 to the Colabawallah, about which I learnt only some months after leaving Bombay.

"I have already mentioned that Major Flood will be so good as to arrange for a clerk as soon as his people shall have arrived. Captain J. can communicate with him about this.

(Signed.) W. R. M.

21*st April* 1866.

"A building account must, of course, be kept separately and discharged monthly, so long as it is going on; the amount must be added to the three items above mentioned.

(Signed.) W. R. M."

21*st April* 1866.

ANSWER CONTINUED.—A couple of days after that Memo. was issued, a request was made, to prisoner to produce the books; he then wrote a note to Lady Mansfield, which I produce; it will be observed that the purport of it is entirely different from that of the note he wrote to me:—

MY DEAR LADY MANSFIELD.—I will complete a statement such as you would like to see when the boxes, with the account, bills, &c., arrive, and let you see it.

" Sir William has not yet spoken to me about the guard room site.

Very truly yours,

(Signed) SCOTT JERVIS.

24*th April* 1866.

The discrepancy between these two notes escaped observation at the time, owing to their having been addressed to two different persons; the excuse offered by the prisoner was a very reasonable one for not producing the books, and was at once accepted by her Ladyship, as a matter of course. I may now say that from that time to this I have never been able to obtain the books, accounts, and vouchers, from the prisoner, notwithstanding frequent requests and orders to that purpose. When the notes referred to were received, there was not the slightest suspicion of the prisoner's honor or integrity, but subsequently, after I had occasion to dispense with his services on my Personal Staff, he was begged, in the ordinary course of business, to render his accounts, books, and vouchers, to my Military Secretary, Major Flood, and my Persian Interpreter, Major Gordon. As I have before said, I had no suspicion whatever at that time, for two Officers were named, so that the time of the Military Secretary might not be unduly taken up with my private affairs, when he might not have leisure for the purpose—in fact, it was a matter of ordinary business. It then appeared that there was a certain unwillingness on the part of the prisoner to give up his accounts with the vouchers; there was no reason apparently why they should not have been balanced up in a few hours. Supposing my previous impressions to have been correct, that he was a man of special aptitude for business, and that my accounts were kept by him up to date according to my wishes. I can only use the word " impression " there, because I have so neglected the duty of supervision, that I could never be able to state that accounts were kept or not, but I think I had a right to believe it from the manner in which the prisoner would at times talk to me of the conduct of the household business, sometimes at my own instance, and sometimes at his.

Q.—Has your Excellency ever authorised Captain Jervis to mingle his accounts with yours?

A.—No.

Q.—Has it been the custom for the Officer in charge of your household to keep the accounts, shown in the books, separately?

A.—Yes.

Q.—Did you conceive it possible that any other course could be followed?

A.—No.

Q.—Would your Excellency state the system, if you can, on which the Officers in charge of your household managed your accounts, or has the Memorandum embraced the whole of that system?

A.—So far as it can be called a system, it is one of entire confidence in the Officer in charge: he engaged servants and contracted bills on my account without further check than he might consider expedient to free himself from too considerable a responsibility. A certain sum of money, as dictated by experience, was given by me monthly, for the ordinary current household expenditure, including petty bills. On account of larger bills, the Officer in charge used to come to me for cheques for the purpose of discharging them. To the best of my knowledge and belief, there never has been a Dr. and Cr. account between the Officer in charge and myself. The Ledger accounts, as I have lately ascertained by reference to the books of the prisoner's predecessors in household charge, were kept in the following form viz: Cr. of an account of advances made to the Officer in charge, and any sums paid to him on my account, and Dr with regard to the expenditure. This very simple account, which it is impossible to misunderstand, was balanced every month, and until the proper custom fell through, through my own neglect, a monthly abstract was shown to me.

Q.—Did your Excellency at any time authorize Captain Jervis, or your Khansamah, either here, or at Mahassoo, or elsewhere, to make use of your wines or comestibles in any other way, or manner, than at your own tables?

A.—No.

Q.—If any such use was made, was it without your knowledge?

A.—Entirely so.

Q.—Would your Excellency state the principle and system on which your Personal Staff and Aides-de-Camp lived with your household?

A.—In my house, my Aides-de-Camp were treated precisely as my relations would be when living with me. It has been, as I always understood, a rule, that nothing should be taken away from the house—I say understood, because to put such a rule in writing, would have been almost an insult, in my opinion, to the Officer in chare of my household; but I recollect some years ago,—shortly after the prisoner had joined my Staff at Bombay—mentioning this obligation, not to him, but to Major Flood, on the occasion of two young Aides-de-Camp (the prisoner was one) living in a detached house, when my Head-Quarters were at Mahableshwar. It is of course preposterous to suppose that any expenditure could be permitted from my property, when my household Officers are away from me.

Q.—When not on immediate attendance, are your Personal Staff Officers authorised to live at your expense?

A.—No.

Q.—Does your Excellency remember any exception to this rule, when an Aide-de-Camp of yours, while away, lived at your expense?

A.—I have reason to know that they never do any thing of the sort.

Q.—In exceptional cases, may wines and stores have been lent?

A.—I think it is very possible that they may have been spared sometimes in very small quantities, as an Officer in charge would know such small assistance, as a mere matter of courtesy, would be gladly acceded to by me. An old book was discovered two days ago,—of 1861, I think,—I dare say Captain Elles has got it,—in which one or two entries of this sort appear. It has, thereby, been displayed, that such a very exceptional act, as one of courtesy, was of the rarest occurrence; but for this I should never have known anything about it, as I never saw these books.

Q.—Did Captain Jervis ever mention to your Excellency that he would credit you with any amount of wines, &c., he might ever have taken from your stores, and that he would give you back any monies he may have used of yours, on that he intended to charge you with his expenses while he was away from you?

A.—No.

Q.—Does your Excellency remember when your residence at Simla broke up last year?

A.—I rather think I gave out in my house, that I considered a Ball, which I gave in the middle of September, was to be the end of such; but I may mention, that I had, afterwards, according to my custom, a few friends to dine with me once or twice a week, which does not come under the head of the question put by the prosecutor.

Q.—Is this one of your account books?

[*Wine Book produced.*]

A.—Yes.

Q.—Was this one of the books taken over by Captain Jervis on the 1st September?

A.—Yes.

Q.—Does this show your daily expenditure for April?

A.—Yes.

Q.—The prisoner stated in his note of the 20th April that the accounts were balanced up to date, is this one of them?

A.—I have already stated so.

Q.—Turning to October's account of your daily expenditure of wines, do you observe any unusual entries therein?

A.—Yes, on the 3rd and the 4th October.

[*Entries read out to the Court.*]

Q.—Is it possible that such an expenditure could have taken place at your table on those dates?

A.—No.

Q.—Is this one of your Excellency's household account books, taken over by Captain Jervis on the 1st September?

[*Store Book produced.*]

A.—Yes.

Q.—Turning to October, of the daily expenditure therein, do you observe any unusual entries?

A.—Yes, on the 2nd October.

[*Entries read out.*]

" 1 tin Mushrooms, 1 Mustard, 1 pot Jelly, 1 Plum Jam, 1 Ham, 1 Tongue, 2 Truffées, 1 Tart Fruit, and a pot each of sundry (other things.)"

Q.—Will your Excellency examine all your accounts in these books, and see whether any refund appears therein, made by the prisoner from 1st September?

A.—I should like it to be examined by the Court.

[*Shown to the Court.*]

PRISONER.—To save the Court trouble, I admit there are none.

Q.—Does your Excellency remember what orders were given with regard to wines and comestibles, being sent out to Solun prior to your tour last year?

A.—When I went to Solun, it was the commencement of my tour; I did not give any orders about my journey, but, as usual, when I move, the thing is done for me, and I presume, on this occasion, by the prisoner; whatever was sent must have been a very small parcel such as would suffice for the consumption of two men; and if entered in the books at all, it should appear, I suppose, on the 14th or the 15th of October, it being on one of those days last year on which I left Simla. It was on the 15th. As the book is here, it may be as well to refer it.

On reference to the daily expenditure on the 12*th*, 13*th*, 14*th*, 15*th October, nothing unusual is observed, the entries on each of those days being* 2 *bottles Beer*, 2 *of Soda Water*, 1 *of Sherry*, 1 *of Claret.*

Q.—Your Excellency mentioned a Cash Book produced before the Court of Inquiry. Do you recognize this as the book you mentioned?

A.—Yes, Cash Book seems to be another name for it. It's a Ledger. It is kept precisely in the way I described in answer to a former question.

Q.—Does the book purport to be a complete account, and for what months?

A.—It purports to be a complete account up to November last, the balance in hand up to that month being stated.

Q.—Does any refund appear in these accounts, on account of wines, or any other of your property?

A.—Apparently, none; there is one recovery stated on the 15th November, of Rs. 60 on account of Bass's Stout.

Q.—Which of your Aides-de-Camp had charge of your stables between the 16th December and the 25th April last?

A.—At the prisoner's request, it was transferred to him on the 16th December, and held by him some time.

Q.—Between the above dates how many horses did your Excellency keep?

A.—Six.

Q.—Had the Officer who was in this charge, as well as that of the household, authority to include his own purchases when making purchases on your account?

A.—He had authority to purchase on my account, but not to include his own purchases therein.

Q.—Has your Excellency, since the 25th April, received any bills from tradesmen in Calcutta for saddlery or stable-gear?

A.—A bill was received by Major Gordon for me from Monteath and Co., Saddlers.

Q.—Has Captain Jervis ever mentioned to you that he had ever ordered from Monteith and Co. any articles of saddlery or stable-gear on your account, or for himself, or that he had received any such on your account?

A.—No.

Q.—After the 24th March 1866, was Captain Jervis in attendance on you till your arrival at Simla?

A.—He was not with me on my journey, which began on the 24th March, and I arrived in Simla on the 10th April.

Q.—During Captain Jervis' journey from Calcuttta to Simla, had he any authority from you to charge to your account any of his own private expenses?

A.—No.

Q.—Did Captain Jervis ever report to you that he had charged his expenses, while travelling, to your Excellency's account?

A.—No.

Q.—Will your Excellency state for what primary reasons your Excellency convened a confidential Court of Inquiry.

A.—It was to enable the prisoner to clear himself of certain accusations which had been made to his disadvantage, and not having been rebutted by him to my satisfaction, which led to his removal from my Staff; as subsequently to that removal, the prisoner had applied for what he called a furlough to England, I had imagined he would have been satisfied with my final decision, the more especially as he had failed to avail himself of an offer of a confidential investigation, by his two brother officers on my personal Staff, namely, Major Flood and Major Gordon, who were directed, as he knew, to confront his accuser with him if he chose to avail himself of the opportunity of an enquiry. On my discovering that he questioned the justice of that decision, I ordered a Special Court of Enquiry of selected Officers, who were entirely independent of my establishment, and, to the best of my belief, previously unacquainted with the subject of the Inquiry, to investigate the matter satisfactorily. If the prisoner had proved to their satisfaction, that the allegations made against him had not sufficient foundation, he would have had the advantage of it with an offer to return to my Staff, and his accuser would have been discharged from my service.

Q.—What was the Report of the Court of Inquiry?

A.—The Court of Inquiry ratified the decision at which I had previously arrived.

Q.—Did your Excellency direct that any other matters should be brought before this Court of Inquiry?

A.—Yes, the Mahassoo business. The Court of Inquiry, if I recollect right, concluded its second sitting. The prisoner, by his tone of correspondence to the Military Secretary, and by his contumacy, prior to the sitting of the Court of Inquiry, had put it absolutely out of my power to ask any explanation, which should not be conducted by a regularly recorded proceeding. I accordingly directed that this Mahassoo accusation, together with what had been alleged about the dishonest charge of travelling expenses, should be investigated by the Court of Inquiry, which otherwise might have been deemed to have concluded its sittings.

Q.—What were your Excellency's intentions in convening a Confidendial Committee of Audit?

A.—The object of that was to enable the prisoner to clear his character of the imputations cast on it by the Mahasoo affair, &c., of which he had not chosen to clear himself at the Court of Inquiry; this object was stated, to the best of my recollection, in the Memorandum of orders conveyed by the Deputy Adjutant-General, when he placed prisoner in arrest for Breach of Trust: it was competent for me to have ordered him for trial on a charge embodying that Breach of Trust, when the proceedings of the Court of Inquiry had been laid before me: but notwithstanding the contumacy he had displayed, I wished him to have had the chance that is generally afforded to Officers accused of malversation, wherever that malversation may have occurred. I should mention that this was the object of that Court of Inquiry, and it was, to the best of my recollection, mentioned in a letter written by me to the learned Counsel for the prisoner, who had asked an audience for himself, on Captain Jervis' behalf, to which I was unable to comply, except under very severe restrictions.

Q.—Did the prisoner ask for an open Court, in lieu of a Confidential Inquiry.?

A.—Yes, after the sitting of the other Committee, and when he had been awarded a Court Martial; I cannot speak accurately to dates, but that is about what happened.

Q.—Did you comply with the request?

A.—No, for very serious reasons.

Q.—Has your Excellency any objection to state those reasons?

A.—The reasons are as follows: In the first place he impugned the honor of the Court of Inquiry, and declared it to have been biassed, thereby insulting myself as Commander-in-Chief of the Army, and three Officers of high rank at the Head Quarters Staff, of unimpeachable honor, who, as he well knew, had been especially selected to do justice in the difference which had arisen between him and me. Further, his conduct at the Court of Inquiry was such, that it was impossible for him to say that the Court was biassed or had shown bias, even if such was the disgraceful fact: and, further, the prisoner had displayed the most determined contempt of authority, in his disobedience of the order to clear his character of the imputation of scandalous conduct, according to the provisions of the Mutiny Act, Articles of War, and the custom of Her Majestys service. And further still, he had twice been directed to clear his character, viz., once before the Court of Inquiry, and secondly, before the Confidential Committee of Audit: he not only failed to do this, but for purposes of his own, declined to restore or to render, such accounts and vouchers as he might possess, the same being, to the best of my belief, my property, and which might have enabled the Committee of Audit to free him from the charge laid against him, supposing his accounts and vouchers to have been decently correct. There is one more reason why I would not grant the request. I consider that the whole of the application was a trap, which no Officer of ordinary experience in command could fall into. It was, to my apprehension, an appeal to the public for the purpose of mystifying opinion, and so, if possible, to deter me from the execution of my duty. The prisoner had an ample opportunity of enquiring; and when he was first placed in arrest, was, I believe, solemnly warned of the consequences of not clearing himself, according to the manner which is prescribed under Her Majesty's Regulations, for Officers and Gentlemen whose character or honesty may be impugned.

Q.—Will your Excellency state the reasons of your arraiging the prisoner before the present Court, on the charges before it?

A.—I was advised that I might try the prisoner on a charge of Criminal Breach of Trust, the proof of which would establish the present charge would have been the same to substantiate Criminal Breach of Trust, according to the definition of the Penal Code. On the proof, on such a charge taking place, prisoner would have undergone the heavy penalty attaching to felony, in addition to that which threatens him now, viz. the punishment for a Military offence. Being personally affected, I considered my judgement in this matter should be entirely guided by that of others; I, accordingly, desired that three Officers (senior) of the Head-Quarters Staff should furnish me with an opinion as to the character of the charges, on which, according to evidence in possession of the Judge Advocate-General, the prisoner should be arraigned. Those Officers recommended that Military Charges should be framed. First, for the purpose of marking the Military offence of which the prisoner had been guilty; and, secondly, for a reason in which I quite agree with them—that to have pressed a charge of felony, might have had a vindictive appearance on my part. Perhaps, it would be as well, that I should advert to the law of the case before this Court. I have already stated that it was in my power to prefer a Criminal Charge; it is obvious, also, that I might have filed a Civil action to recover the cost of the stores, &c., alleged to have been misappropriated; this course, being one at my own option, I was able to throw it aside, the cost of the stores being a matter of no consequence; but there is one thing which, in the exercise of my duty, I cannot cast aside or condone, and that is the allegation of scandalous conduct against an Officer, bearing Her Majesty's Commission. When such an allegation has been made, it is the imperative duty of the superior Officer, according to Act of Parliament, to compel the accused to clear his character, or to see justice done, in the sense of the Mutiny Act and Articles of War. The superior Officer, even if he would wish to condone, is himself responsible in this matter, that there shall be no condonation. I would hold any Officer commanding a Regiment of this Army responsible for such condonation, if it came to my knowledge, and I would attack his Commission for it. That which I exact from others, in the exercise of my office, I cannot flinch from myself, howsoever odious or disgusting the duty, as in the case of the present prosecution. It is right to say that the issue before this Court is not the act of misappropriation, but it is the crime of scandalous conduct, unworthy of an Officer and a Gentleman, of which the unexplained misappropriation is the expression. There is no possible recovery to be founded on the charges to be proved; the single result which can follow on conviction is that the Officer has proved himself unfit to be one of a body of Officers in one of Her Majesty's Regiments. The fact of this alleged misappropriation having taken place

with respect to my property, is a mere accident of the case; it has affected me most painfully, but I could not alter the line of conduct I was bound to pursue.

Cross examination of the Prosecutor, Sir W. Mansfield, by Prisoner.

Q.—Your Excellency has stated that the duty of the Officer in charge of the household was a Military duty. Can you, in addition to your Memorandum, point to any other orders which would convey that such was a Military duty?

A.—An order given by a superior Military Officer, in a Military sense, conveys the obligation of a Military duty, just as you see in the case of a department where the Military Officer is bound to conform to the rules of that department; his failing so to do, does not carry with it, as a general rule, the consequences of Military disobedience as involving a Court Martial, but entails loss of appointment or reprimand, as the case may be. The Officer, if he dislikes the departmental rule, has, generally speaking, the remedy in his own hands, namely, to give up his appointment: this is most undeniably the case in the matter of my Personal Staff.

Q.—I ask your Excellency, whether you can give any other than your own exposition on the point?

A.—I consider none necessary.

Q.—Does your Excellency recognise any distinction between Military and social or private duties?

A.—I think that for that answer, I will refer to the Memorandum that has already been handed in. It is obvious that one who is not prepared to admit the social and domestic obligations of the family into which he is admitted as a great privilege, must be removed from that family.

Q.—Your Excellency's Memorandum, itself, states that the duties of an Aide-de-Camp are extremely difficult, being for the most part social. Be good enough to specify what are Military and what are social duties?

A.—There are certain duties essentially Military, which are performed in the field; the social duties are those which must occur to every gentlemen who is treated in the most intimate manner, as a guest and as a relation.

Q.—Will your Excellency look upon the Memorandum, and state which are the Military and which the social duties therein detailed?

A.—I look on all the duties as Military that had regard to myself.

Q.—On what principles does your Excellency hold that your own opinion is sufficient authority on so important a point, and on which I base my arguments in defence?

A.—Points concerning them have nothing to do with the charges. The prisoner is not charged with any disobedience with regard to my household affairs, but with disobedience in the matter of clearing his character from charges of embezzlement, when required to do so according to the Mutiny Act and Articles of War. The question is one on which it would be difficult to quote any authority, but it is exactly one of that character which would be referred by Government in the case of a difference arising in a department in which a Military subordinate might be concerned. I am convinced, Government would accept such a decision from me as Commander-in-Chief, without calling it in question, or asking for an authority.

Court adjourned at 4 P.M., till Thursday, 28th June, at 11 A.M.

IIIRD DAY'S PROCEEDINGS.

Court re-assembled at 11 A.M., *on Thursday* 28*th June* 1866.

Sir William Mansfield's cross-examination,—(*Continued.*)

Q.—Your Excellency has stated that the reason given by me to Lady Mansfield for not at once preparing the accounts, was accepted as a matter of course, and no suspicion then existed. Will your Excellency then state what first excited suspicion in your mind against me?

A.—I thought it extremely odd, considering I had been told some days before, that the household books were complete up to date, that when prisoner was requested to render the accounts, he asked for time, after removal from my Staff. I was aware, if the house books were kept up to date, a man with a very great aptitude for business like the prisoner, could have balanced the books in half an hour; when he declared the books were not ready, by asking for time, it became apparent to my apprehension, that he had written to me a positive untruth. I made no remark at this, but allowed the Military Secretary to repeat his requests for the accounts, which were demanded for the purpose of ascertaining whether prisoner was in my debt, and, more especially, had satisfied certain demands in Calcutta for which he received my special draft on my leaving that city; or whether, on the other hand, there might be a balance against me, to discharge which would be naturally an object of anxiety, as the prisoner was about to quit my service for ever. Notwithstanding the adverse appearance, I steadfastly declined to doubt the prisoner's integrity; nevertheless, there was an unsatisfactory private correspondence going on for many days, as well as I can recollect, that is to say from about beginning of May till the assembly of the Court of Inquiry, which I think was about the 10th of May. In one of his notes, prisoner permitted himself to be impertinent to me in his answer to the Military Secretary about the demand made for statements of accounts—this impertinence I did not allow the Military Secretary to reply to, to the best of my recollection; thus it was impossible not to have suspicions that something was wrong; but I did not dare to allow myself to form a notion of what that something might be, and certainly gave out an expression in my house to the opinion that whatever other faults the prisoner might have, his exact method of business would save him from anything that was positively wrong.

Q.—Will your Excellency state precisely what are the exact expressions in the two notes, which constituted the discrepancy which excited this suspicion and convinced your Excellency that I had written a positive untruth?

A.—The first sentence in the first note, and the first sentence in the second note, display an absolute discrepancy, I think; I should add that I did not accuse the prisoner of a positive untruth in these notes, but that the untruth became apparent to my mind, many days after, under peculiar circumstances, when the prisoner, having been removed from my Staff, showed that he was not able to produce completed books, which he had previously declared to be complete, I could then only suppose, trusting to my indolence with regard to my accounts, of which he had had such experience, he hazarded the statement, the untruth of which he thus came to expose himself.

Q.—May I ask your Excellency once more to point out precisely whether there is any discrepancy, and what it is,—this is of great importance to me, as it forms the first ground of your Excellency's suspicion against one whom you had trusted for years

A.—Perhaps the two sentences had better be written in the proceedings. In the note to me, of the 20th April, it is observed, "that all the house books are complete to date, and that any time you wish to go over them, I shall be happy to attend on you for the purpose." It is obvious that here there is no reservation whatever; the books are declared to be complete to date. In the second note, he says, (and which is written on the 24th April, apparently)—"I will complete a statement, such as you would like to see, when the boxes, with accounts, bills, &c., arrive, and let you see it." It is thus apparent, that whereas I was told I could see the books at any moment on the 20th, it was said on the 24th April, that boxes, with accounts, bills, &c., had not come; the discrepancy, therefore, is very clear —there was no reservation in the first note, there was a large one in the second. It may be observed that prisoner was not asked for a statement, but for the books, as a statement

was not at that time wanted; but a business-like examination of books—an account of an expenditure extending over some six months.

Q.—Will your Excellency state what are the house books?

A.—I can't say very accurately what the house books are; but I should say a ledger, files of receipts, a letter book, and such other books as are kept by the supply or issue servants, which would be the vouchers for the gross entries in the Ledger. I would mention that I am not a good authority in these matters, as they have always been left to others, and I have learnt more about them in the last three weeks than I ever knew before. The books to which I adverted the day before yesterday, display the system of accounts which was introduced by a very excellent and gallant friend of mine, who, being my Military Secretary in 1860, as a personal favor to me, took charge of my household when my Aide-de-Camp went to England. Nothing can exceed the clearness or precision of this mode of accounts. Prisoner has often taken pleasure in expressing to me his admiration of the method introduced by the friend referred to, as showing a most perfect and simple system, which, if duly kept up, would absolutely guard against the possibility of a mistake. I used to listen to such expressions in silence, or uttered a simple sentence of gratification, but I thought I had a right to imply from them, that system was preserved in all its details by prisoner, and, therefore, when the strange unwillingness to render his accounts was exhibited, and time asked for, I felt the more that suspicions would grow against him.

Q.—Does your Excellency mean, then, to say that there is no difference between your Excellency looking over the "house books," and my preparing a general statement of accounts, "such as Lady Mansfield would like to see"?

A.—I do not know what the meaning of looking over a statement that Lady Mansfield would like to see, means; the prisoner knows perfectly well that the only book I should ever care to see, so far as I was myself concerned, was a Ledger account; I draw no distinction myself between house and household accounts or books; and it is in my opinion ridiculous to entertain such a distinction.

Q.—Does not your Excellency perceive that in my note to your Excellency I alluded to a "statement up to recent date" which your Excellency had seen, in contradistinction to the "house books" which I offered to show you—are they not evidently different things? I beg the note may be read again with great attention.

A.—I believe that I had seen no such statement, and it struck me at the time when I received that note; I cannot swear to this, but it is my conviction, that I saw no statement of my accounts from date of prisoner taking over charge, viz., 1st September last year. The matter did not appear to me, however, of any consequence, and it passed out of my mind. I recollect, however, in Calcutta, once or twice, prisoner brought me an account book, to point out certain items of expenditure, the character of which I do not recollect, but about which, it is probable, enquiry might have been made. It is possible that he, in this matter, refers to a statement of accounts. I do not wish to contest his accuracy on the point, but I think it is evident that the two things are different, viz, an account or day book, and a statement of accounts, which, if it means anything, is either a copy of a ledger, or an abstract from it. I do not believe that I have had either one or the other since prisoner took over charge. It has been before shown, that the practice of a monthly abstract had been allowed to fall through. I am tolerably sure that I had reminded the prisoner of this either directly or indirectly, and I recollect telling him in Calcutta that it would save my time, and trouble to him, if he would come to me at stated periods for orders, as a Staff Officer does, as it was a nuisance to me to have to take up business at irregular intervals, in which I had no exact acquaintance. Prisoner acquiesced in this, but it was never done.

Q.—Is your Excellency quite sure that Lady Mansfield did not ask me for a statement of the accounts?

A.—I may say that I am sure; but the prisoner can, in all probablity, produce her Ladyship's note, if such was the case. I know it was rather a joke, that when books were asked for, a statement should be offered; at the time, as I have said before, this matter was not thought of; since the late investigations began, the notion of the promised statement, in place of the books, has raised a smile at the prisoner's expense.

Q.—How can your Excellency say you are sure; and if I offered statements, when books were called for, why was Lady Mansfield satisfied, and why did her Ladyship take my reasons as a matter of course?

A.—Because she then believed him to be a man of honor. As I did not write the note, asking for the books, I cannot of course swear that a statement was not asked for, but as before said, it rests with the prisoner to produce the note written by her Ladyship, when it will be apparent whether such a request was made or not.

Q.—But if my answer to Lady Mansfield referred to something quite different from the purport of her Ladyship's request, how is it that no notice was taken of it?

A.—I really can't say, except that such confidence was placed in the prisoner, as a gentleman, and also as a man of business, that, at that stage, almost anything he might have chosen to write, would have been accepted as satisfactory.

Q.—Your Excellency has declared that I wrote a positive untruth; are you now quite sure that the house books only would have enabled me to prepare the accounts, which Lady Mansfield required, and that nothing else was required?

A.—I have before said that I believed books were required, and I consider, as before stated, that an untruth was written by the prisoner when he asserted that the house books were complete, the same having been shown by him since to be incomplete. In the memorandum of 21st April, it was distinctly stated that Lady Mansfield will examine the books at her leisure, that was written because I was told by prisoner that the books were complete to date, and there is not a word said there about "statements" such as prisoner refers to.

Q.—I respectfully state, that I do not refer to what your Excellency thinks; but to the purport and contents of my note, and the statement made therein?

A.—I must leave what has been stated to speak for itself. If his books were in the condition stated by him, it is, in my opinion, absurd to suppose that he could not have closed them in a couple of hours, or less time. The production of his Ledger was the real statement of his accounts, if the statement was true that the books were complete to date.

Q.—Then this is merely a matter of your Excellency's opinion, and the untruth, so publicly charged against me, thus rests solely on that opinion?

A.—I really don't know what the question means, my evidence must rest on its merits; it appears to me that the prisoner wrote to me one day to be the case, that which turned out not to be so; if this does not constitute untruth, I don't know what does.

Q.—Did not your Excellency state that you knew very little about your accounts. How can you then consider your opinion, only, so conclusive as to warrant your charging me publicly with untruth?

A.—This opinion rests on the facts which have been stated with regard to certain circumstances, and dates, and the interpretation of certain notes written by the prisoner; it has nothing to do with the appreciation of accounts. As the notes are before the Court, and the arguments of the prisoner have apparently been exhausted, I would submit, with the greatest deference, that the entire question which has been raised by prisoner, viz., as to when my suspicion first arose, is irrelevant to the matter with which the prisoner stands charged.

The following question put by the prisoner was objected to by the prosecutor. The Court was closed.

On re-opening, cross-examination was continued.

Q.—Was there any difference or disagreement between your Excellency and myself, before Lady Mansfield arrived from England?

A.—I have not had occasion to find severe fault with prisoner since 1864 if I recollect rightly; on that occasion, to the best of my recollection, he was impertinent, or committed other misconduct, towards the Quarter-master General of the Bombay Army. So long a time has passed, since the occurrence, that I cannot tax my memory too closely, but I believe he was then told that if he ever offended again in a like manner, it would be impossible for me to retain him in my service. I would also say that, when I framed a draught of rules for the guidance of A.D.C.'s in my household with respect to politeness to my guests, and

the necessity of not showing pique on the part of a Personal Staff Officer when he might have a difference with one of my friends, I had the prisoner's conduct more especially in my eye, because I had been told that he did permit himself the discourtesy of doing what is called "cutting" ladies and gentlemen, when he had a difference with the latter. I can't say for certain that this is the fact, and the report was so disagreeable to me, that I did not act upon it in any way; but it was the real cause of my framing the rules, when I re-organised my Staff on this side of India. It was always known that prisoner was a man of a most difficult temper, and I consider that I have myself held out my hand three or four times to save him from the result of his bad temper, when he might have been removed; it is, therefore, absurd to insinuate that prisoner had not often given reason for dissatisfaction before her Ladyship's return to India.

Q.—Had this difference in any degree lowered your Excellency's confidence in my integrity or honour, and up to the time of her Ladyship's recent arrival did you not fully trust me?

A.—I have already stated, as closely as I can, the manner in which suspicion relating to the prisoner first arose. I have also stated that, till the occurrence of recent events, my confidence in the prisoner was unabated, consequently no faults, such as those alluded to in the previous answer, could have had any effect on my opinion of him; the matter on which he is tried, and the suspicions which gave rise out of his own conduct, rest entirely on their own merits, and have nothing to do with the influence of Lady Mansfield or any one else.

Q.—In what does the criminality consist with which you now charge me; the act of taking and eating the stores, or the failure to recover them, or their value?

A.—If the prisoner can clear himself of dishonest intention with regard to the abstraction of the stores, and the other matters of dishonesty charged against him, I suppose he will be absolved of criminality under that charge; but that will not absolve him from the failure to clear his character as an Officer and Gentleman, which has compelled me to entertain the notion of criminality with regard to the abstraction of stores, and the matter of dishonest intention charged against him.

Q.—I referred in my question, only to the stores. Your Excellency refers to my intention regarding the stores. I again take the liberty of asking whether guilty intention is shown by the taking and eating, or by the delay in recovering?

A.—I consider that guilty. The intention is shown by the transgression of the rules of the establishment by which prisoner permitted himself to take wines and stores away from the house to another house rented by himself, where he lived and exercised hospitality for about two months; this living and hospitality having been, as it appears, carried on at my expense. If the prisoner, before proceeding to do this, had said there is a great difficulty in getting wines and stores such as I want, and do you object to my taking yours, making a refund either in money or in kind, the whole thing would have been quite simple, and I should have answered in a manner dictated by the state of the stores, and as to what was wanted for the establishment; but prisoner did nothing of the sort, he violated the acknowledged rules of my establishment, by taking those stores for his own use; he never hinted to me that he had done so; in the accounts of October and Novemb. there is no entry to show that he had made the slightest memo. to mark that the said wines and stores had been consumed by him, and in like manner, in the money account, which is closed up to the end of November, there is no statement of refund for value, as in the other books there is no note of the abstraction, which might have guarded the prisoner from misconstruction. I do not believe that any recovery was contemplated by the prisoner. After the facts I have stated, it is, I think, impossible to believe so. I recollect that the prisoner, in Calcutta, about the month of February last, told me of his own accord, without any prompting or enquiry, that I must expect the consumption of wine to be larger, because our party was larger; I was surprised at the remark, and said that this appeared quite reasonable. It has only occurred to me lately to have remembered this conversation, and on putting two and two together, coming to the conclusion that the party, meaning the gentlemen living with me, was at the time referred to, not larger, but perhaps even smaller, than in the previous case. I do not attach any importance to this, except that supposing the prisoner's abstraction to have been made with honest intention, it would have been a very convenient opportunity for him to have mentioned a cause why

the apparent consumption, had been for certain months larger than it ought to have been, but that he was the person responsible for it.

Q.—I would again, with the permission of the Court, respectfully repeat my question, and beg for a precise answer. Being on your oath, does your Excellency charge me with the offence of stealing your Excellency's stores in the first instance, or the offence of failing to recover the value?

A.—I must refer to my former answer.

Q.—Your Excellency has mentioned the admirable system of accounts introduced by a former Military Secretary. Does your Excellency know whether, under the system to which your Excellency refers, it has been the custom to allow individuals to receive supplies from your Excellency's establishment for payment?

A.—I believe not; with one or two exceptions, which, as stated in my evidence, given the day before yesterday, appear in the books kept by Colonel Kirby and Major Flood, the practice seems to have been absolutely forbidden by those officers: it appears that on one or two occasions, when I was marching, and my Head-Quarters Staff wanted some very trifling assistance, it was afforded to them in the most petty manner: the name of the officers so assisted, who, it is believed had charge of the Head-Quarters Mess, appearing in the consumption book. The same officer, who was a very intimate friend of my family, and of Colonel Kirby who managed for me, seems also to have been assisted in the matter of gram-fed mutton, as a payment on that account appears in the book referred to, but the amount is very small, viz., I think about Rupees 60 for a year. I looked through the book myself two or three days ago, the same being the ledger during Colonel Kirby's time, Major Flood's time, and the commencement of Captain Jervis's time, and I could find no other instances of the alienation of stores, or of the recovery on account of them. I do not think I ever saw these books till I examined them the other day, but it is absolutely clear to me that the instances of neighbourly assistance, just quoted, were of the most exceptional kind, during the time that I was in Bombay, and that any such system as that suggested by the prisoner to have existed, was unknown, and always has been unknown in my establishment, unless he has inaugurated changes himself during his term of office with which he has left me unacquainted.

Q.—Has your Excellency ever taken the pains to ascertain this fact, beyond the trifling instances referred to?

A.—I have made enquiries since the commencement of the recent investigation, and I am informed that the impressions just stated are correct.

Q.—If I can show that such has been the case for years, and to several individuals, would it tend to alter your Excellency's opinion and throw some doubts on the accuracy of your suspicions?

A.—No.

Q.—Will your Excellency state why this fact will not affect your opinion, which your Excellency states is based on the fact that no such system has existed?

A.—Because an honest man seeks enquiry, when the honour or honesty of his character is impugned. He may be indignant; but he reserves the expression of his indignation till his character has been cleared; he courts enquiry, he searches for evidence, to save himself; he brings every possible document and book without delay to stamp the injustice of the accusation. I deeply regret to say that the prisoner's conduct in the matter concerned has been the exact opposite. He has withheld evidence, he has evaded enquiry, he has shown a determination, rising almost to mutiny, for the purpose of carrying out that evasion, and this has been done after being most solemnly told that an enquiry was held to enable him to clear his character, that enquiry being carried on in such a form, that if the prisoner had established his character before it, or had shown that he had erred only through laxity, he would have stood forth before the world not only without a shadow upon his character but without its being known that that character had ever been impugned.

Q.—Your Excellency has yourself fixed a charge of untruth upon me based on that note, and I respectfully submit that your Excellency is under an obligation to show clearly how my

saying that the house books were up to date, is shown to be an untruth, because I asked for time to prepare a general statement of the whole accounts ?

A.—I have already given a very sufficient reason. As respects the point put by the prisoner, I have spoken to facts so far as they are within my knowledge, any further opinion from me is of no consequence. If the prisoner has other facts in his possession of which I am ignorant, and can adduce them in his defence as invalidating any opinion I may have formed, this, I submit, is simply a question for the Court, and not one on which I can give any satisfactory answer.

Q. —Will your Excellency look at this book and state whether you recognise it ?

A.—I am not aware that I have ever seen this book before, but it appears to me to be a Ledger kept on my account.

WITNESS.—Half rising in his chair, and with some excitement of manner, exclaimed : " I ask the Court to impound this book, it is one of those dishonestly retained by the prisoner for his own sinister purposes, and it is my property."

PRISONER.—I object to the book passing into the possession of Sir William Mansfield, but have no objection to its remaining in the custody of the Court.

Court closed.

COURT.—Decide that His Excellency should not be allowed to have possession of the book, but that it should remain in the custody of the Court, available, for reference, alike to prosecutor and prisoner.

Court adjourned at 4 P. M., till Friday 29th June, 1866.

IVTH DAY'S PROCEEDINGS.

Court re-assembled at 11 A.M., *on Friday, the 29th June,* 1866.

Cross-examination of His Excellency Sir William Mansfield.—(*Continued*)

(On the last question and answer being read out, witness desired to be permitted to see the book again, in order to add to his answer.)

A. CONTINUED.—This book purports to be a ledger, commencing with September 1863,—the final closing of the accounts in this book appearing to be on the 24th April 1865. I have reason to belive that during the time covered by these accounts, prisoner had charge of my household affairs in the Bombay Presidency; consequently, if there has been any improper buying or selling in my establishment during that time, or if there has been any alienation of stores, wines, &c., for the use of private parties, and in transgression of the previous usage of the house, it must be held that the responsibility rests with the prisoner, and not with any system which may have existed in the time of his predecessors, for, as I have already shown by answers to previous questions, no such system did exist in their time. I do not, as a witness, wish to continue a discussion on the point which was raised with regard to the Court impounding this book, because of its being my property, and dishonestly and illegally detained by the prisoner. I would, however, call the attention of the Court to the fact that these accounts are closed to the 24th April 1865, and, being a thing of the past, it is entirely distinct from the accounts with regard to which the prisoner has been criminated, and with respect to which he has been pleased to make claims on me in other places; consequently, the plea which he advanced in Court, that this book was necessary to him as an agent with regard to pecuniary claims, is invalid. His detention of this book is founded on a sinister motive towards me, as shown by the dates of the closed account, and his admission that it was required for use in a Civil Court. This may be perhaps a reason satisfactory to himself for retaining my property, but it can hardly be an excuse for "the disobedience of orders."

Q.—Will your Excellency refer to the items entered in this book marked with a cross, and say what they are?

A.—The entries adduced by the prisoner have no reference to the charges. Might I ask that the first instance in the first charge be read out. These entries relate apparently to refunds made by two Officers who lived almost next door to me at Poona, and, as a great favour, and exceptionally, were permitted to have what was spare in the way of mutton from the establishment, waste being thus avoided, and a kindness done to the officers concerned. It is observed that this has nothing to do with stores or wines. The third entry is, so far as I can understand it, a recovery from an Aide-de-Camp for the expense of shoeing his horses for some months. I have enquired to know what was the meaning of such a charge appearing in this book; it appears to be as follows:—That it was my custiom to have a blacksmith when on the march and in quarters; this servant was represented to have been an expensive one, and the Staff Officers represented that they could not make use of this "nal-bund," unless they paid him regularly, according to the number of horses shod by him; accordingly, he came to be the servant of all the gentlemen who employed him, although nominally he appeared in the books as mine. This consequently accounts for a refund appearing in the ledger for such a matter. It seems to be a very ordinary matter of business for the accommodation of a number of men living in the same house, and it is but a proof of the exactness with which I was served in those days, and of the scrupulous honor which governed the proceedings of the Officers concerned. With permission of the Court, I shall turn over the leaves of this book, and take up every such charge as it appears.

On the 17th November 1863 there is a recovery for a shoeing account from the Adjutant-General of the Bombay Army. I presume this was accounted for by the fact of my being on the march at that date, and that the servant whose functions have been described, was the only one available for the Adjutant-General at that date. I can only presume this, because it was my habit to march in that Presidency at that season; but at this distance of time, without reference to documents, I could not certify to the fact. I

find here in December 1863, something like eight (8) dozen of sherry. No name is mentioned opposite that entry,—(8) eight dozen sherry, at 25 per dozen, Rs. 200. If the prisoner had abstracted the eight dozen of sherry from my stores on that occasion, and afterwards made a refund, he distinctly transgressed the rules of my house. I find, in July 1864, four little accounts amounting to Rs. 6-8 for shoeing when my head-quarters were at Mahableshwur. The gentlemen concerned did not belong to any establishment; but it must have been a proper accommodation afforded by the prisoner to them, in the absence of a "nal-bund." In August 1864, I find that Major Flood, Military Secretary, supplied himself with mutton to the amount of Rs. 7-7 during June and August. That must have been done, of course, with the consent, and proper consent, of the prisoner. I find here an entry in November 1864 for Colonel Phayre, Quarter-master-General, whose name has been mentioned before in my examination in chief, on the same account. I find, on the 18th January 1865, credits from prisoner on account of shoeing, stretching from May 1863 to November 1864 If I had ever examined this book before, I would certainly have called his attention to the misconstruction to which he exposed himself by allowing a bill on such account to run in his own favor from May 1863 to November 1864. There are shoeing bills in February 1865, in like manner, for Major Flood and Captain Christie, both on my Staff. I have now gone through the whole book; if I have omitted any item of the nature referred to by the prisoner, he will doubtless point it out; but I submit that the so-called facts to which he alluded in his previous question, and which he taxed me with as such as ought to shape my opinion with regard to the system pursued in my house, whether in the time of his predecessors or his own, do nowhere appear in the book which has been brought forward by him to substantiate them. I still hold resolutely to the belief that no officer who has been in charge of my household, including the prisoner himself, has ever allowed, till the Mahassoo business took place, that the wines and stores should be appropriated, except to the obvious purposes for which they were provided under my orders.

Q.—May I request that Your Excellency will read the particular items in regard to which I asked my question, exactly as they are written,—viz., the items in one page, which I have marked with a cross.

A.—The items are recorded in the proceedings, the same being recoveries on account of mutton sold during the previous eighteen months to different parties; also bills for shoeing extending over similar periods.

Q.—Does not this book show that, for the years at least which are covered by it, there was a system of supply and expenditure first charged to Your Excellency, and afterwards recovered from the parties availing themselves of it?

A.—To the extent that I have deposed in my previous evidence. The character of it is such that it was evidently of the most exceptional kind and of the pettiest description; for the accomodation of intimate friends living next door; and the one item of shoeing horses, which has been fully explained. I consider this book the most absolute proof of the exactness of the information under which this evidence is given, and showing that the alienation of wines, stores, &c., effected by the prisoner, for his own use, without my knowledge, was an absolute innovation.

Q.—Does not this book also show that intervals of many months, varying from six to fifteen, elapsed between the sale of the mutton and payment of the same, and such also in regard to the shoeing?

A.—It appears so.

Q.—If I conducted these matters and kept these accounts with "scrupulous honesty," at that time, as Your Excellency has just stated, why does Your Excellency assume that, because stores instead of mutton and shoeing are concerned, I have suddenly become a thief?

A.—I must leave that question to be determined by the Court.

Q.—How did Your Excellency know that the charge of shoeing horses was entered in this book before Your Excellency saw it just now?

A.—I saw it yesterday.

Q.—Do you consider that the officers who enjoyed the mutton supplied to them, were open to the charge of misappropriation, because they did not pay for it till so long after they had eaten it?

A.—Certainly not.

Q.—Was the mutton sold with your Excellency's approval?

A.—Certainly, on grounds of neighbourly assistance; I do not know anything of these affairs of my own knowledge, but I am credibly informed that this supply of mutton, about which so much has been said, simply related to what would otherwise have been wasted in a hot climate; that it was procured at the express wish of the parties concerned, who, it appears from that book, were three in number, and that it did not happen that animals were killed for such supply. I again guard myself by saying that about such details I have no knowledge.

Q.—Did not your Excellency charge me in the severest terms with grave criminality in allowing mutton to be sold to two officers at Simla this year?

A.—I don't know what that has to do with this charge, and I submit that this trial will last for ever if such questions are allowed.

On the witness making this objection, in a somewhat dictatorial tone, General Brind, the President of the Court, observed that the Court had been from the first desirous that full opportunity should, for the ends of justice, be given to both parties, to state all that was considered important; that the Court had not once interfered with His Excellency, but had compelled the prisoner to expunge or withdraw all that was considered disrespectful in his expressions; that he spoke the unanimous sentiments of the Court when he said that they did not think it would be fair or just to exclude the question just put, which was strictly relevant to the question at issue. This declaration of the Court's sentiment was delivered with great dignity and impressiveness, and produced some little sensation.

Court closed for further consideration of some point not exactly known to the spectators. Court allow the question.

Witness here mentioned to the Court that he had not the slightest objection to answer the question, but remarked that to allow such questions would only protract sittings indefinitely.

Prisoner then begged respectfully to submit to the Court, that if all this matter were to be considered irrelevant, His Excellency should not have been allowed to state it, but, having been recorded, he submitted that he was entitled to rebut it by cross-examination.

Prisoner further submitted that His Excellency had pointedly referred to dismissal from the Staff with which the question was closely connected. It was of vital importance to him, as showing the groundless character of the first action taken against him.

WITNESS.—I removed the prisoner from my Staff, for setting up a retail shop on my premises on his own account,—I myself being constituted one of his retail customers Sufficient evidence was shown to me to establish the primâ facie case against the prisoner as just stated. It was not, therefore, on account of the mere sale of mutton, but because he had become a retail vendor, using my premises for the purpose, and the shadow of my name, as I solemnly believe, for the purpose of increasing the number of his customers. These retail operations extended over various articles, some of which were actually purchased in the bazaar, according to the evidence before me, to be retailed again by the prisoner. As the Court has chosen to enter into this matter, which I am afraid will much prolong its labours, I would mention that I am acquainted with what has been stated, from evidence laid before me; but that it is not matter to which I can speak directly.

Court here interposed that the last answer was not a direct reply to the question put, and, taking into consideration that this was the last question on this subject which the Court would allow at this stage of the proceedings, requested that His Excellency would be pleased to give a direct answer to the question, which was here again read out.

A. CONTINUED.—I cannot reply in more direct terms than I have already. Certain memoranda conveying my censure to the prisoner with regard to the matter concerned, were written by me, after taking the evidence to which I have alluded. It is probable that the prosecutor will be able to produce these memoranda if required by the Court; but I am positively unable to answer the question alluded to in more precise terms than I have done.

Prisoner here wished, in deference to the opinion of the Court, to express his decision to put no more questions on the subject, when Colonel Haythorne, a member of the Court, rose, and remarked, that as the expression was in deference to the opinion of the Court, the members at the lower end of the table would no doubt like to see it, when the slip of paper containing it was handed down to him.

Q.—Will Your Excellency look at this note and state whose signature it bears?

A.—Lady Mansfield's initials.

Q.—And this note also?

A.—Lady Manfield's signature. That note I presume to have been written after the memorandum which has been referred to.

Here the prisoner rose and pointed out to the Court, as there were certain portions of the note which were not relevant to the question before it, and which it might be disagreeable to Lady Mansfield to have read out, he (Captain Jervis) would only ask to have that portion read which had immediate reference to the point at issue.

Q.—Will Your Excellency read both these notes, or allow the Judge-Advocate-General to read the passages scored?

A.—I have no objection.

Both notes were read as follows:—

1ST NOTE.—The only book, I believe, which I have still to see for this month, is your own, which contains the summary of all expenditure, and which you said you would let me have as soon as it was ready.

2ND NOTE.—I am now looking over all my books. Will you be so good as to let me have the one which contains the amount of the total expenditure since you took over charge last year. Have you seen the site His Excellency fixed on for the guard-room?

Q.—Now will Your Excellency state distinctly, after reading these notes, what it was that Lady Mansfield really required from me?

A.—I suppose the ledger.

Q.—What does Your Excellency mean by the ledger?

A.—I mean such a book as that which we have had before the Court to-day, and the other book which was produced by the prosecutor yesterday.

Q.—Will Your Excellency state, what, in your Excellency's opinion, is the difference between a ledger and a cash account?

A.—It is rather difficult for me to say, as I am not in the habit of keeping books. The book produced to-day comprises my notion of a ledger, and it is possible that I may be in error that a cash account means a diary of expenditure from day to day, as money is spent or received,—the same being an authority, or one of the authorities on which a ledger may afterwards be made out.

Q.—May I trouble Your Excellency, now, after the perusal of those notes of Lady Mansfield's, to say whether, if Lady Mansfield required what Her Ladyship specifies,—viz., a summary of the whole expenditure—whether that be in Your Excellency's opinion a ledger or not—there is any, and what, contradiction in my two notes referred to yesterday, in one of which I stated that the "house books" were up to date, and in the other, that I could not prepare the statement she wished, till certain boxes, papers, &c., arrived.

A.—I must refer to my answer of yesterday as it appears to me that the notes in question make the point still more clear,—viz., that the books having been declared to be complete to date by the prisoner, and that he was ready to present them at a moment's notice, they were not complete. With the Court's permission, I will refer to the prisoner's note of 20th

April. There could not possibly be any misapprehension in the prisoner's mind with respect to the house books being complete to date, nor as to the inference to be drawn from the assertion, because he concludes the note with this sentence:—"The books, which you can see at a moment's notice, will convince you that everything was right." How could I be convinced that everything was right, if a ledger was not complete to date. In point of fact, the last sentence of this note is the exact complement of the first one. It is clear to me, from Her Ladyship's notes, that it was not a statement that she required, but such a book as I have described.

Court closed to discuss a question put in by the prisoner. Prisoner submitted that he would withdraw the question, but wished to refresh his memory with regard to the point in evidence relating to it. Question allowed by the Court.

Q.—Has Your Excellency any idea why I felt that unwillingness to produce my accounts, which Your Excellency has referred to?

A.—I really cannot account for the prisoner's motives, unless it was, that he wished to change places with me, in disputing my right to give orders with regard to my own affairs. I have before said, that up to that moment there was no suspicion in my mind.

Q.—How has Your Excellency arrived at the extent and value of the stores which you accuse me of misappropriating?

A.—That must be shown by other evidence. I am not able to speak on that subject.

Here some sensation in the Court was created at the following remark by the prisoner:—"Will Your Excellency say whether it is not a maxim of law and a principle of justice, that a person bringing a serious charge on oath against another, which will lead him to ruin, should satisfy himself of the grounds on which the charge is laid?"

A hum of voices arose, proceeding both from the spectators and members of the Court, and in consequence the reporter was unable to catch His Excellency's reply, but it was very short, and not recorded. The prisoner then further submitted, amid some little excitement. "Whether a prosecution can stand when the party bringing the charges cannot satisfy the Court on what grounds he brings them?"

Q.—Your Excellency has publicly brought these charges against me, and on oath; and cannot you yourself state on what that charge rests?

When the Court adjourned at 4 P.M., till Monday, July 2nd, leaving this last question to be replied to at the next sitting.

VTH DAY'S PROCEEDINGS.

Court re-assembled at 11 A.M., *on Monday, 2nd July,* 1866.

Court closed, to consider whether the last question put by the prisoner, and which remained unanswered when the Court adjourned on the previous Friday, should be allowed to stand. The question referred to was as follows, viz:—

Your Excellency has publicly brought the charge against me, and on oath; cannot you yourself state on what that charge rests?

Court determined that it could not be allowed.

Cross-examination of His Excellency Sir W. Mansfield (*continued.*)

Q.—Your Excellency stated in your examination in chief, that I had charge of your Excellency's household expenditure from the 1st September last. Does your Excellency mean that this was the only period during which I managed your household affairs?

A.—No; I referred merely to what happened in this Presidency as shown by the books produced by the prisoner who had charge in Bombay for about two years.

Q.—During the whole of that period, did I exert myself to the best of my abilities in the management, and was your Excellency thoroughly satisfied with my exertions?

A.—Yes, I had every reason to be satisfied, otherwise I would not have proposed to him to take charge again.

Q.—Did your Excellency keep any private clerks in your own pay to assist me in the preparation of accounts during that period; or any, and what portion of it?

A.—No; the custom of the house was, as transmitted from my predecessor, Sir H. Somerset, that a clerk in the Military Secretary's office assisted the officer in charge of the household as a writer in this matter: the prisoner must have had some assistance, as his predecessors.

Q.—Has your Excellency kept any clerks since I took charge on the 1st September; and what assistance have I had?

A.—I recollect that about that date, there was some talk about the clerk, who was retained for the purpose of writing for the officer in charge, being too young for his office. I am tolerably sure that I told prisoner to provide himself with as good a writer as could be found, at my expense: I certainly did so to his predecessor, in charge: if, therefore, he was in want of due assistance, it was his own fault. I really don't know, but I believe this young clerk was discharged in Simla: in point of fact, I don't know any officer of my acquaintance who is so independent of a clerk as the prisoner.

Q.—When was the arrangement transferred to Captain Christie; what was the result of the transfer; and why was it transferred to me?

A.—Captain Christie took charge of my marching establishment, when I left Bombay, about the end of February 1865, for a march into Sind, prior to relieving Sir Hugh Rose of his command. Prisoner having obtained three months' leave of absence to remain in Bombay, was requested by me at the time to close everything for me at Bombay. Captain Christie remained in charge till 1st September as before related; his management having proved unsuccessful, I proposed to the prisoner that he should take it over again, to which, as far as I can see, he very gladly acceded: there is a curious feature connected with this, which illustrates the position of my evidence at an earlier stage. The prisoner was somewhat impatient to get hold of the account books, and accused Captain Christie of great negligence in handing over his accounts, and asked me to give Captain Christie a positive order to remain at home for the purpose of making up his accounts. Accordingly, at the prisoner's instance, I did speak, or cause Captain Christie to be spoken to,—I forget which,—with a view of obviating the delay as much as possible. I have much pleasure in referring to the exactness with which Captain Christie, when thus addressed, discharged in two or three days the duty which I have been in vain requiring from prisoner for two months.

to me, further than that he was the messenger of the acting head of the firm with whom he happened to be residing. The object of the prisoner's question is very obvious, and if that object be not met, a slur might be cast on my name. I must, therefore, ask the permission of the Court to say, that on my discovery that Port Canning shares had gone up to an extravagant premium, something like a thousand per cent. which was absolutely a most fictitious value, I determined to adhere to my principle, which through life I have maintained, not to permit myself to gamble in the premia of the share market; accordingly, with respect to these very shares, although I might at once, according to the quotations of the market, have, after the shares were paid for, made £2,500 on an allotment which cost me £500, I determined not to sell them, and I have them at the present day, with respect to that determination. The prisoner, although trusted in so many things, was, I am happy to say, not trusted with my banker's book. [Here the prisoner rose, and threw himself on the protection of the Court. Major General Brind declared that the question challenged the fullest reply. The prisoner assented, but pointed out that though the question should be fully answered, no insult should be offered him by the witness in so doing.] I did so trust my Military Secretary, and his intimate acquaintance with my private affairs would enable him to show how false and treacherous is the suggestion conveyed in the prisoner's question.

Q.—Your Excellency has stated that I was positively prohibited from allowing retail sales. Why, then, did your Excellency direct the retail sale of your Excellency's beer to private individuals, and at what profit was it sold?

A.—I distinctly deny ever having done anything of the sort; just when the prisoner was relieved from charge, lately, I learnt to my extreme surprise, that he ordered beer wholesale on my account, and that he was retailing it to certain gentlemen in my neighbourhood, whether with hope of profit to himsef or not, I cannot say; as soon as I made this discovery, I gave orders that the objectionable practice should cease immediately, and I also ordered that the gentlemen who had profit by the practice, should be informed that I could not possibly consent to any payment being received on account of the beer in question.

Q.—How did Your Excellency find out that I had misapropriated your Excellency's stores? and on what occasion?

A.—I really cannot say how the thing first transpired in my establishment; suspicion had gradually clouded over the prisoner, in spite of myself, on account of his extraordinary unwillingness to render his accounts; suddenly, the question was put, I do not know how, to the effect, that the prisoner had been living at my expense at Mahassoo. The consumption books were called for, which seemed to vouch the suspicion; the servants were then examined separately and carefully; the greatest pains were taken to prevent collusion on their part, nevertheless their statements hung together with remarkable consistency. I think that Captain Harbord was examined with regard to some point, but he could give no real testimony, with the exception of his having made a payment to the prisoner for his share of certain expenses at Mahassoo. What told principally against the prisioner was the fact that he had never, directly or indirectly, suggested to me that he had made such use of my property; this, coupled with the unwillingness to render his accounts, at last fixed the conviction on me that something had taken place which could not bear the light. I accordingly directed that the matter should be enquired into by some gentlemen who could bring perfect independence to bear on the subject, that is, the Court of Enquiry, which has already been investigating certain conduct of the prisoner.

Q.—Did your Excellency ask me for any explanation, or give me any opportunity of explaining the circumstances, before summoning a Court of Enquiry?

A.—As I have before said, the Court of Enquiry was sitting; I think, I have also mentioned, that the prisoner's conduct had been such, in respect of contumacy, that I was precluded from holding private communication with him; that the contumacy having ensued on the asssembly of the Court of Enquiry, which was ordered owing to a strict notion of justice towards him, when I understood that he had considered unjust a decision which had removed him from my Staff; but further, the prisoner had not removed from my mind the impression, that concealment and duplicity had been practised towards me in an important particular, consequently, as a superior officer, who had received allegations damaging to the character of a subordinate, any private communication from me would,

under the circumstances related, have been, in my opinion, contrary to the precedents of the service, according to which the character of officers is guarded. I gave all this matter the most serious reflection, and I believe that everything which was done was exactly in accordance with what any regimental commanding officer would have ordered in the case of one of his captains being charged with improper or scandalous conduct. In the consideration of matters of this description, all private relations cease as a matter of necessity, until the character of the officer concerned stands forth clear and unsullied.

Q.—Will Your Excellency explain precisely what acts of mine Your Excellency refers to, as being such that prevented Your Excellency asking for an explanotion, before Your Excellency brought this grave and dishonoring charge against me?

A.—The prisoner distinctly refused to go to the Court of Enquiry in the first instance, and he did not go, except under the threat of being visited with the consequences of disobedience of orders. In a previous part of my evidence, I have alluded to the fact of his being personally impertinent to me in his correspondence with the Military Secretary with reference to the demand for his accounts—I think, I should say, he was contumacious throughout in his attendance at the Court of Enquiry, as reported to me.

Q.—Does Your Excellency remember that I declined, because my edition of Pipon's Military Manual distinctly stated that it was optional for me to go or not?

A.—He ought to have known that the Manual was wrong, and I believe he did. I looked upon the whole thing as a piece of impertinence.

Q.—Did not a correspondence ensue between Your Excellency and myself on the subject, and will Your Excellency produce the correspondence on the point?

A.—Out of compassion for him, I did that which most General officers would not have done, that is to say, that instead of at once placing him in arrest for his gross impertinence and affectation of legal knowledge for the purpose of disobeying my orders, I desired the Adjutant-General to send him an extract of a later edition of *Pipon*, in which the error of which the prisoner had taken advantage was set right. If the Court wish, there can be no objection to copies of the correspondence being annexed to the proceedings; but it has nothing to do with the issue contained in the charges.

The copies were annexed, and the Court adjourned till Tuesday, the 3rd July 1866.

VIth DAY'S PROCEEDINGS.

Court re-assembled at 11 A.M., *on Tuesday 3rd July*, 1866.

Copies of correspondence annexed to the last day's proceedings were here read out.

1.—From Colonel Longden, C. B., Adjutant General—Confidential—to Captain Scott Jervis.

2.—From Captain Scott Jervis, to Colonel Longden, C. B., Adjutant General, dated 10th May 1866.

Cross-examination continued, of Sir William Mansfield, K. C. B, K. S. I.

Q.—Has Your Excellency any objection to produce, and have read, the order first directing me to attend the Court of Enquiry, with my first answer thereto?

A.—I have no objection, if the Court has none.

Prisonor.—I only wish to show the Court from the whole correspondence that I did not commit contumacy as stated by His Excellency.

Court closed, question disallowed, as being contrary to its ruling previously intimated; the prisoner not being charged with disobedience in not attending the Committee of Audit. The Court begs prisoner will confine himself, in his further cross-examination, to matter in direct connection with the charges.

Prisoner.—I respectfully submit to the Court, that His Excellencey has given my "contumacy" in not going to the Court of Enquiry as a reason why His Excellency did not ask me for explanation to regard in the stores. If I am not allowed to show that I committed no contumacy, I cannot shield my character.

Q.—Will Your Excellency kindly state what servants were examined, and what other persons? who conducted the examination, and where was it held?

A.—To the best of my recollection, the servants immediately examined, were, a man who was lately an Abdar in my service, some man connected with the kitchen, I think his name is Baboo Khan; a chupprassie, whose name I don't know; and I think the last was Captain Harbord. The consumption books were looked at, at the same time, which really formed the important part of the evidence, as vouching the statements of the servants. The examination was conducted in my presence, and taken down by the Military Secretary. In fact, it was made as formal as it well could be. Each servant was carefully warned, and precautions were taken to prevent the possibility of collusion on their part; they did not know what they were to be examined upon, when they entered the room in my house, where the examination was conducted, so far as I am aware.

Q.—Your Excellency has not stated exactly where the examination was held; may I beg Your Excellency to state in what room?

A.—The question is absurd. The prisoner knows it could only take place in my own room, with his knowledge of my habits of business.

Q.—Was this examination taken before, that is prior to the first Court of Enquiry, or afterwards?

PROSECUTOR.—This matter was not introduced in the examination in chief.

PRISONER.—I submit to the Court, that the general statement in His Excellency's examination in chief are such, that it becomes necessary for me to cross-examine. The witness, if I remember right, did make a statement which fully justifies this question; but even if he did not, it is absolutely necessary for the ends of justice, and I submit, for the satisfaction of the Court, that the real origin and history of these proceedings, all of which were taken by His Excellency behind my back, should be developed in this cross-examination.

COURT.—His Excellency has stated that he had no objection to answer the question, when one of the members remarked that it would only be drifting away into foreign matter.

WITNESS.—I rather think I have answered the question previously. The Court here entered into a discussion on the point.

DEPUTY JUDGE ADVOCATE.—I beg to remark that it is quite usual for a military officer to send charges made against an officer before a Court of Enquiry, for investigation.

PRISONER.—I submit that the opinion of the Deputy Judge Advocate has no connection with the subject. The witness has stated that he enquired into the matter, and discovered that I had misappropriated his stores.

Court ordered the question shall be put.

A.—Afterwards.

Q.—Can your Excellency mention the date?

A.—No, I cannot precisely, but I rather think that it was the same day that the Court of Enquiry assembled for the third time. If it was not the same day, it was the day before; but I recollect that there was not the slightest delay in forwarding the matter for investigation by a Court of Enquiry, when the prima facie case had been made out as described.

Q.—It is of great importance (as I shall afterwards show) to know from Your Excellency whether the examination was actually before or after the third sitting of the Court.

A.—There were only three sittings of the Court, so far as I know, consequently it must have been before the last sitting.

Q.—Will Your Excellency produce the papers connected with the examination referred to, as well as the charge laid before the Court of Enquiry?

DEPUTY JUDGE ADVOCATE.—I beg to remark that the papers can be produced, but when the evidence in proof is called, then will be the time for cross-examination on this point.

PRISONER.—I submit that these papers are according to the witness' statement, under his own control, the examination having been conducted by His Excellency, in person, in my absence. It will lie at the root of my whole defence to show the character, the time, the manner, and every other detail connected with these enquiries, and I am helpless in this matter, unless the Court directs the production of them now. There is no rule of law, justice, or procedure, to forbid such a course, and it is surely desirable that the Court should know how these enquiries were conducted, and what were the sources of His Excellency's information.

WITNESS.—I would submit to the Court, that to clear up that apprehension, I may be permitted to answer the question.

Court closed. Court decided that when the natives or other witnesses, who were to be examined, appear before this Court to give their evidence, these papers can be gone into.

WITNESS.—Those papers were attached to the proceedings of the Court of Enquiry to the best of my belief.

Q.—May I ask Your Excellency to refresh your memory, and endeavour to state, as precisely as you can, who first informed you of the fact of misappropriation which led to the examination?

A.—I really cannot say; the suspicion arose against the prisoner in my household; but by whom the charges was first fixed, it is not in my power to answer.

Q.—Your Excellency has stated that you asked for no explanation from me before you charged me with misappropriation. If Your Excellency had asked me, and I had told you, that I had taken these stores, intending to pay for them, and recover their value when the accounts were closed, would Your Excellency have then charged me with that crime?

A.—I should have taxed him with a falsehood which was elicited by his own cross-examination very clearly, with regard to his books being complete. Had they been complete, and he had shown a refund, either in kind or in money, he would, of course, have got the advantage of it. But if he could not show such refund, either in kind or money, which he has now himself admitted, that circumstance, taken together with the deception practised on me with respect to the books being complete, and his inability to render his accounts for ten days, which had elapsed since his removal from my Staff, would have compelled me to reject his plea of honest intention, unless some extraordinary circumstances had been stated, sufficient to obliterate the extraordinary grounds of suspicion to which I have adverted, and which I believe would be sufficient for the committal of any prisoner charged with misappropriation before a Police Court.

Q.—Did Your Excellency consider that there was no possibility of doubt as to the intention of a gentleman and officer whom you had fully trusted up to that time, and who had served you faithfully for so many years?

A.—I did consider there was possiblity of doubt, and it was on that account that I did not place the prisoner at once in arrest, when I sent the original deposition to the Court of Enquiry for him to explain away. If I had not doubted, it would have been my simple duty to have ordered his trial at once. Even after his foolish and contumacious conduct at the Court of Enquiry, I still continued to doubt the possibility of one being guilty of such conduct who had been so long about my person. Yet it must be said that the prisoner's conduct, from first to last, since it has been impugned, has been of that character which fixes the stain of guilt on an accused man.

Q.—If there was a possibility even of doubt, does not Your Excellency consider that, as a gentleman, your Aide-de-Camp, and a friend who had done you faithful service, I was entitled to the benefit of that doubt, before I was publicly accused at a Court of Enquiry, and that Your Excellency was bound to ask me for an explanation before you thus accused me?

A.—In the first place, the prisoner was not publicly accused at a Court of Enquiry. There is a *suggestio falsi* in this question, he knows well, and he has tendered his thanks in one of his letters to the Adjutant General, because the Court of Enquiry was strictly confidential. The prisoner had ceased to be my friend, and I am sorry to say he was rapidly losing the character of a gentleman in my eyes, by the circumstances which have been elucidated in the course of this cross-examination, with regard to the matter concerned. I do not contest his previous devotion to my service in former days, but the recollection of that could not but be wiped out by what appeared to me to be a course of duplicity and open contempt of authority, when, as an officer and a gentleman, he was desired to clear a character on which a slur had been cast. I should also state that at that time he was no longer my Aide-de-Camp, he having been removed for sufficient cause.

Q.—Even if the Court of Enquiry was confidential, it was still held in the presence of several officers. Does your Excellency now consider that it was fair, or for the benefit of the service, that these public, or quasi-public proceedings, should take place, before you had ever asked me for an explanation?

A.—I still say that there is a *suggestio falsi* in the question. The prisoner knows, as well as I do, that it is quite impossible that the proceedings of such a Court of Enquiry could transpire beyond myself and the department of the Judge Advocate General which would have to report on it, the same being confidentially transmitted to that department by the Adjutant-General of the Army. With respect to the proceeding being fair, or for the benefit of the service, I answer with a direct affirmative. The prisoner was treated as I should treat my nearest relation, if similar accusations were laid against him; and this, not for the purpose of persecuting the accused person, but of performing the most friendly act towards him, viz., of righting him in such a manner that it might be impossible that any aspersion could be thrown on him hereafter.

PRISONER.—The Court cannot fail to have observed how frequently and pointedly the fact of my dismissal from His Excellency's Staff has been referred to by the witness, and how His Excellency has pressed the point of "my unwillingness" to produce my accounts. Both these facts have been stated to my disparagement, and I feel that both must, before this Court, tend to my disparagement, unless I am allowed to show, from the mouth of the witness himself, the facts connected with them; I respectfully, therefore, solicit the Court's permission to cross-examine His Excellency fully on those two points. I ask permission, before I put any questions on these points, because the Court appeared at a former sitting to object to these subjects being mooted. But it is of vital importance to me, to prove from His Excellency's own statements, what good and sufficient cause I had for the "unwillingness," so frequently mentioned. This is, I submit, absolutely necessary in justice to me.

Court decided that it will take each question on its own merits, and receive or reject them as it considers necessary.

Q.—Has Your Excellency ever enquired, and does Your Excellency know, how I obtained actual possession of these stores, and what I did with them?

Court here stated that the answer should be as precise as possible; Your Excellency is giving "hear-say" evidence.

A.—It appears to me that the question has been answered before. I did enquire of the servants as before related, and it is known and thought that the prisoner has acknowledged that the stores were taken out by him without refund. It is presumed that the prosecutor will adduce other evidence than mine with regard to their consumption.

Q.—I mean in what way I took them? Openly, or privately, and how?

A.—I don't know anything about that. The prisoner never told me that he took them, so I must say that he took them privately.

Q.—Has Your Excellency never ascertained, or tried to ascertain, whether there was any concealment in the way I took them, or whether I had them given out to me in the ordinary course?

A.—As the prisoner had entire charge of my establishment, including the stores, he could give any order he pleased, and no servant would have dared to disobey him; consequently, it was in his power to alienate anything he pleased, and unless he brought it to my notice himself, no one would have reported the matter to me. The fact of concealment lay in his not reporting to me, when he permitted himself a practice which was an absolute innovation.

Q.—Your Excellency has yourself produced and read accounts, in which those are entered, Is not this the case.

A.—Yes; but I believe the entries to be incorrect, with regard to the month more especially referred to.

Q.—How does Your Excellency suppose these entries came into these accounts?

A.—Part of them appear in the prisoner's own hand-writing; some of the entries on October 2nd are undoubtedly in the prisoner's handwriting; but further, he was responsible for the books, in whatever handwriting they might be made out.

Q.—Will Your Excellency answer this last question more precisely?

A.—I cannot do so; I have answered it to the best of my ability.

Q.—Your Excellency states that the entries are not correct. Whether or not, has not Your Excellency yourself produced these books, and does not your Excellency rely upon them as evidence against me?

A.—Certainly, as part of the evidence against the prisoner; I consider the October page of these books to contain false entries nevertheless, though the amounts, as represented to me, are less than the quantity alleged to have been misappropriated by the prisoner. These books are strong corroborative evidence that certain abstraction of stores had taken place, and they certify to the fact that the prisoner knew of that abstraction. The particular feature of the wine account, about the month of October, is, that it appears to be the solitary month treated of, in the whole book, wherein consumption took place, and is not closed, and does not strike a balance, of what remained in store.

Q.—Where a person wishes to steal, or misappropriate, does he usually do so with the knowledge of others, and especially natives, and in such a way as to secure evidence against himself?

A.—The question is one that hardly admits of a reasonable answer. I should think not. But the question does not apply to the prisoner's case, as the servants in carrying out the stores in question saw no occasion to question the motives of one whom they were desired to recognise as their legitimate master.

Q.—Has Your Excellency ever enquired or ascertained whether any portion of the stores, which Your Excellency has charged me with misappropriating, have been lent to other parties, such, for instance, as His Excellency the Viceroy?

A.—It has never occurred to me to ask such a question, but I should think it impossible. I am tolerably certain that it would have been mentioned in my presence if such an occurrence had taken place.

Q.—Does Your Excellency know on what occasion most of these stores were used?

A.—I know nothing about it, beyond what was deposed to before me, on occasions which have been previously referred to.

Q.—Does not Your Excellency know that I gave several pic-nics in the early part of October last?

A.—By hearsay, I know this; and, as I understand, at my own expense.

Q.—Did not Your Excellency yourself occasionally honour me with your attendance at these parties?

A.—The prisoner having taken a house at Mahassoo, asked me more than once to pay him a visit there. It is not much in my way to pay visits to anybody, but I thought it would be churlish on my part not to gratify the prisoner for once. Accordingly, I think about the beginning of October or end of September, I cannot say which, I passed, to the best of my recollection, three or four days as his guest. There were at the time, I believe, two other gentlemen besides, whom the prisoner had proposed to me that he should ask to meet me; they being in the habit of dining with me every week.

Q.—If your Excellency yourself honoured me with your presence, how did Your Excellency say that you knew of these parties only by hearsay?

A.—Because the party was restricted as described to myself and two others during my visit to the prisoner at Mahasso, but I do recollect, now that he calls it to my mind, that on, I think, the day of my arrival at Mahasso, there was a large party assembled, not for the purpose of meeting me, because I came in the evening, so far as I can recollect, but all this seems to me to have nothing to do with the case before the Court, as no one, so far as I can tell, has questioned the fact of the prisoner giving parties at Mahassoo.

Q.—Does your Excellency know, or have you reason to believe, that some of these parties at Mahassoo were given by others as well as by myself?

A.—I believe that Captain Harbord did join in some of these parties, and that he paid the prisoner on account of them; on this, however, Captain Harbord will speak for himself.

The Court adjourned at 4 P.M., till Wednesday, July 4th, at 11 A. M.

VIIth DAY'S PROCEEDINGS.

Court re-assembled at 11 A.M., *on Wednesday, July 4th* 1866.

Cross examination of SIR WILLIAM MANSFIELD, K.C.B., K.S.I.—(*Continued.*)

Q.—Is your Excellency aware that Captain Christie also joined in giving the parties at Mahassoo in October last?

A.—No, I am not.

Q.—If Captain Harbord made a refund towards the value of the stores, does that not show that they were taken with the intention of recovering their value afterwards?

A.—I think not, because, if such an intention had existed, an entry of Captain Harbord's payment would surely have appeared in the Ledger, which has been before the Court, and in which the Court observed, if I recollect rightly, a small recovery which was entered on account of an advance to servants.

Q.—Then on what grounds did Captain Harbord make this payment to me?

A.—As I am informed, to pay his share of the entertainments?

Q.—Is your Excellency sure that the book you refer to is a Ledger?

A.—I have already, in my previous evidence, given my reasons for considering it a Ledger, and it is exactly similar in character and form to the Ledger kept by the prisoner in Bombay, which he laid before the Court.

Q.—Will your Excellency look at this book and say what it is?

A.—This seems to be an account book with various Tradesmen, showing the nature of my accounts with them, that is to say, apparently copies of the Bills with the Tradesmen. I should like the same consideration to be shown with regard to that book, as regarding the book I asked to have impounded on the second day of the proceedings.

Q.—Is not this the book which is called the "Ledger" by all accountants and commercial men?

A.—I should say not, but the Court is as competent to judge of that question as I am. As I understand this book, which I see for the first time, it does not treat of monies paid over to the officer in charge, but contains exact copies of very considerable transactions with Tradesmen in England and in India, payments to whom were made by orders from myself, irrespectively of the expenditure controlled by the officer in charge. Even if it is a Ledger, which I do not think it is, it is clearly not the Ledger which treats of the business with regard to the actual payments of money, for which the officer in charge is responsible. I am a very fallible authority in such matters.

Q.—Did your Excellency ever see a letter written by me to your Military Secretary, entreating that I might not be unecessarily insulted?

A.—I recollect a considerable correspondence between the prisoner and the Military Secretary, and I now do call to mind that expression was used at the same time. I am clearly of opinion that, when making use of that expression, the prisoner made an accusation against the Military Secretary which was contrary to fact, and that he was deliberately picking out quarrels, for his own purposes, with respect to the after justification of disobedience of my orders.

Q.—Will your Excellency produce that letter, to which I refer, and allow it to be read?

A.—I have not got the letter; they are in the possession of the Military Secretary.

PROSECUTOR.—I beg to be allowed to object to the production of correspondence which is irrelevant to the charges.

PRISONER.—So far from being irrelevant, it is strictly relevant, as disclosing the nature of the whole proceedings taken against me, and the earnestness with which I deprecated their harshness, while I expressed my readiness to do all that was really required, if allowed to do so, without being subjected to personal insult.

WITNESS.—I would mention that if the Court wishes for that correspondence, the Military Secretary can produce it hereafter.

Court closed,

Court orders the letter to be produced and read.

Simla, 14th May, 1866.

"My Dear Flood,—I attended the Court of Enquiry as directed. The most awful statement, false, in fact without a particle of truth, was read out by Gordon; I was made so unwell by the shock it gave me, that I was obliged to return home. Pray assure Sir William that I am only desirous to afford the fullest explanation on every point on which he wishes for it. Not a word that has been said against me is true, as I can prove: for God's sake, however, let me entreat of Sir William to spare my feelings; ask me questions, and I will explain all and every thing there may be a doubt in his mind about. Depute Gordon, or one man, to take over charge, and ask for any explanation, but do not I beg and pray of His Excellency, insult me, when there is no occasion for it.

"My Counsel, in whose hands I placed the case the day I received the correspondence, under the impression His Excellency would not hear me, will arrive very shortly now, and everything can be gone into. But, in the meantime, let me say that every accusation brought against me is untrue from beginning to end."

(Signed) E. S. JERVIS."

Q.—Your Excellency has referred to the misappropriation of certain horse-gear. Will your Excellency state how you arrived at this information?

A.—That charge is prepared on certain evidence which has been before the Judge Advocate-General, I do not myself know anything of it, except that a very large Saddler's Bill was shown to me, which had been contracted in my name by the prisoner, apparently beyond my wants: certain vouchers also were shown to me as coming from the Saddler, and signed by the prisoner, the same being the basis of the Saddler's Bill.

Q.—Did Monteith and Co., send in their Bill for these articles of their own account, or did your Excellency, or any of your Staff, ask for it?

A.—The Bill was asked for subsequently to the prisoner's being relieved of the charge of my stables.

Q.—Did your Excellency ever ask me for explanation in regard to these things, except by summoning me to answer the charge before a Court of Enquiry?

A.—No, but the business about the Saddlery appeared to be substantiated, to the best of my recollection subsequently to his having been warned for a Court Martial.

Q.—Can your Excellency state why the Bill was asked for, and whether it was so asked for by your Excellency's instructions?

A.—Major Gordon told me some days after he took over charge, that the prisoner had mentioned that a very large Bill was due from the Saddlers in Calcutta. Major Gordon was accordingly told by me to send for it.

Q.—Supposing that I took these articles with the intention of debiting myself with them when the Bill was paid, does your Excellency consider that I should have been guilty of misappropriation?

A.—I really cannot answer hypotheses of that sort. It appears to me that the prisoner's intentions must be judged by the facts of his conduct.

Q.—If I did take these things with the intention of recovering their value, or paying for them, could I have done so until I closed the accounts after receipt of the Bill?

A.—I don't know whether he received the Bill or not, he must judge for himself. One of my grievances against him, has been his detention of all my Bills and Vouchers.

Q.—May I ask your Excellency to reply to the last question—it was, could I have recovered the value till the accounts were adjusted after receipt of the Bill?

A.—I presume not.

Q.—How long after Major Gordon had taken charge, did your Excellency instruct Major Gordon to write for Monteith's Bill?

A.—Several days I believe, but cannot say exactly how long.

Q.—Has your Excellency any objection to show the correspondence regarding the transfer of the charge of the stables to Major Gordon, as well as regarding the request for Monteith's Bill?

A.—I have no knowledge of this correspondence, except that Major Gordon informed me that after there were suspicions of the prisioner's integrity, and he had to write again, that the greatest caution was taken to prevent any slur being cast upon any one. In all this I really have no knowledge; if the prisoner wishes for this correspondence, it would be better for him to call for it, when Major Gordon, being before the Court, will say whether or not he will consent to produce it.

Q.—The correspondence on these two matters being important to me, and that regarding the transfer being signed by your Excellency yourself, may I again ask your Excellency to produce it?

A.—I have before said, I know nothing at all about it; if there is any memorandum signed by me, the contents of it escape me; but I am sure that no such memo. can be relevant to the charge.

Q.—Does your Excellency remember making purchases in company with myself and Captains Harbord and Christie from Mackenzie, Lyall & Co., and are you aware that all those purchases were debited to your Excellency's account?

A.—I certainly did make purchases to a considerable amount at Mackenzie, Lyall's; I cannot say whether articles purchased by the prisoner were debited to me on that occasion. I really can't say; I don't know anything about it. But I do know, that I yesterday paid that very Bill, on a corrected account, which had been sent for from Calcutta; consequently, it is evident that Mackenzie, Lyall & Co. must have had correct vouchers, and that in that instance the accounts of no Staff Officer were mixed up with mine.

Q.—Did Your Excellency see the first account sent in, and how was the corrected account obtained?

A.—The corrected account was sent for about ten days ago; I dare say, I may have seen an original Bill; I cannot say for certain whether I did or not; all that I can say is that the last account received from Mackenzie, Lyall and Co., involving considerable purchases, besides those alluded to, on the day stated to, by the prisoner, appeared to me to be correct, and has been paid accordingly.

Q.—Will your Excellency produce the letters, or copies of them, written to obtain the "corrected account," and state what was the nature of the corrections?

A.—I have nothing to produce upon the subject; it was a simple matter of business, calling for a Bill.

Q.—Will your Excellency distinctly state whether my purchases, and the purchases of the other Aides-de-Camp, were entered in the Bill before it was corrected?

A.—I have before said I know nothing about it.

Q.—Is your Excellency aware, whether any other members of your Excellency's Staff were supplied with any articles of horse-gear; and if they have been, does your Excellency charge them with misappropriation also?

A.—I believe that no other Officers have been so supplied, and what is more, I am convinced that the prisoner would not allow them to have been so supplied; but further, I would dwell on the character of the management which could permit the credit of the master to be involved for the personal advantage of the Agent, whether or not, there might be a distant intention of redeeming that credit on the part of the Agent. It is clear that if an Agent permits himself such a practice, he has either a fraudulent intention, or he permits such a laxity, that at any moment he renders himself liable to be accused of fraud. It is also clear that no establishment can escape insolvency, where an Agent permits himself such practices; the inference is, therefore, perfectly clear that no such practice or system can ever be permitted by the master of the house who preserves his right mind.

Q.—Has your Excellency made any enquiries on this point from the other Officers of the Staff?

A.—No; but I rather think, that the question was once mentioned in my presence, as presenting an impossibility, even if there had been a wish on the part of other Officers of my Staff, because of the jealous vigilance of the prisoner in regard to others.

Q.—Your Excellency has charged me with debiting my private travelling expenses to your Excellency, will you state on what occasion this was done?

A.—This was apparently done on the occasion of the prisoner's late journey from Calcutta to Simla.

Q.—Did not the Butler Abbey travel with me on that occasion, and did not he travel at your Excellency's expense?

A.—Yes; but this man explained the almost infinitesimal amount of the expenditure on his account during the journey; in fact nothing could be more satisfactory than the details about it.

Q.—When did your Excellency examine Abbey on this subject?

A.—I examined him on the same morning as the Mahassoo business was investigated, at least I believe it was the same morning; all these dates will be found in the proceedings of the Court of Enquiry.

Q.—How did the fact, on which that examination was based, come to your Excellency's knowledge?

A.—The man reported it himself.

Q.—Does it not strike your Excellency, that it was a very natural arrangement, under the system in force, to allow Abbey to hold the purse, and put all expenses down to your Excellency's account, in the first instance, subject to adjustment when the accounts were closed?

A.—Certainly not. I believe it to have been quite contrary to the practice followed by any other Officer who has ever been on my Staff; and granting the possibility of honest intention, it was but another instance of rendering one, committing himself to such a practice, liable to the greatest misconstruction, *viz.*, of fraud, more especially when the entry was a false one.

Q.—Is your Excellency aware that the money actually paid was all my own money, your Excellency's account having been overdrawn?

A.—I am not aware of anything of the sort, and I cannot believe that my account was overdrawn, because, so far as I have ever seen my accounts, there has been invariably a credit at the beginning of every month. Three or four days before the prisoner's journey began, he received from me the sum of Rupees four thousand, namely, Rupees two thousand for current expenditure,—that is, for the current month of March,—and Rupees two thousand for the purpose of discharging some eight or ten Bills of which he showed me a list. I was about to write out cheques for those Bills, when he proposed to me to give him the whole sum, and that he would go round and pay them and save me the trouble. I have gone into this detail to show that the prisoner received from me the money he asked for, and, as has been stated before in my evidence, I believe a credit and debit account has never been permitted between my Staff Officers and myself.

Q.—Where did your Excellency examine Abbey on these matters, and before whom, and who conducted the examination?

A.—The examination was conducted in the presence of my Military Secretary, by myself, as before stated, Major Gordon being present also, I believe.

Q.—I am going, with the permission of the Court, to produce the original paper regarding the transfer of the stable to Major Gordon. As your Excellency has been good enough to produce some correspondence, will your Excellency also produce all the correspondence regarding Monteith's and Mackenzie, Lyall's Bills, and any other papers you may have connected with the stable transfer?

A.—It appears to me that it would be absurd to produce correspondence to my Tradesmen, asking them for their accounts, and, with the permission of the Court, I would say that the request should not be acceded to as being a great irregularity, it being foreign to the matter now before the Court; otherwise there could be no objection to their publication.

Court closed.

Court order that the correspondence be produced.

WITNESS.—I have not that correspondence in my own possession, but I will direct Major Gordon to bring it with him when he appears before the Court; I hope that will meet the Court's wishes, and save my time.

Q.—Your Excellency has stated in your examination in chief, that my application for a Court of Enquiry, composed of unbiassed individuals, was a "trap to mystify public opinion, and prevent your Excellency from doing your duty." May I ask how it was a trap?

A.—The prisoner knows that to have granted his request would have been to have committed myself to a course which was contrary to the practice and precedents of Her Majesty's Service. When an Officer's character is impugned, it is the invariable custom to keep all enquiries as private as possible, until a case shall have been made out, rendering trial necessary, and, in the present instance, the previous investigations were at an end, and a Court Martial had been ordered in accordance with the warning communicated to the prisoner when he was placed in arrest, and required to clear his character. If I had been so weak as to yield to the demand made in his most improper letter, a great scandal would have taken place, without any real issue being tried, and his character would not have been absolved, because no witness who appeared before such a Court could have been compelled to answer.

Q.—In your examination in chief, your Excellency stated that I insulted your Excellency as Commander-in-Chief by asking for a second Court of Enquiry, composed of unbiassed men. Will your Excellency produce the correspondence, and have it read before the Court,—this accusation being a very serious one, and contained in your examination in chief?

A.—I have no objection to the correspondence being read. I should prefer having it in original; I distrust prints very much.

The following letters were here read out:—

From Captain Scott Jervis, to Colonel Longden, dated Simla, 25th May.

From Colonel Longden, to Captain Scott Jervis, dated Simla, 26th May.

From Captain Scott Jervis, to Colonel Longden, dated Simla, 28th May.

25th May 1866.

SIR,

I have the honor to acknowledge the receipt of your letter of 23rd Inst.

I am greatly pained to find that His Excellency Sir W. Mansfield views my conduct with such grave displeasure, but as I am entirely confident of my innocence in all the matters laid to my charge, save the single hasty breach of military discipline, in absenting myself from the Court of Enquiry, I can only trust to the impartiality of the tribunal before which I may be arraigned, for absolution and acquittal.

In the meantime, however, I take the liberty of submitting for His Excellency's indulgent consideration, the following remarks.

As the case stands at present, a finding has, I understand, been recorded against me, by the Court of Enquiry which His Excellency convened on the 10th instant.

That Court consisted of members of His Excellency Sir W. Mansfield's Staff:—

The Deputy Adjutant General of the Army.

The Deputy Judge Advocate General, and the Deputy Quarter Master General of the Army.

The prosecutor being His Excellency's Aide-de-Camp.

The motive of this selection, I am well aware, was that the proceedings should not be made public, a feeling of consideration, on His Excellency's part, for which I am sincerely grateful.

But I would now entreat His Excellency to consider whether the Court, on whose finding I am to be arraigned before a General Court Martial, can be regarded as an unbiassed and impartial Court.

His Excellency Sir W. Mansfield had already passed a strong opinion in regard to the truth of the charges made in my absence by the witness Abbey. His Excellency had placed his own interpretation on my letter to Major Flood, denying all culpability, and treated it as an admission of guilt. He had declared that "nothing more was to be done," had summarily dismissed me from his Staff, and thus, without receiving any explanation, or holding any personal communication with me, had passed his own decision on the whole matter.

Without for a moment venturing to inpugn the motives, either of His Excellency, or the Members of the Court, I would yet respectfully submit, whether a Court, so composed, and under such peculiar circumstances, in a matter in which His Excellency the Commander-in-Chief was the real prosecutor, which related solely to Sir W. Mansfield's private affairs, and in which His Excellency had already recorded judgement, can be regarded, either according to legal principle, military regulation, or the general opinion of the public, as an impartial or unbiassed tribunal, whose finding would be sufficient to justify my arraignment before a General Court Martial.

This question becomes the more important, because, in consequence of the absence of my Counsel, and the extremely critical position in which these proceedings had placed me, I had been compelled to decline taking any part in the proceedings.

I have now submitted an explanation of those proceedings regarding the farm, which have, I conceive, been so entirely mis-understood: and if, after perusal of that explanation, and a consideration of the remarks now offered, His Excellency sees fit to grant me an impartial enquiry, before an independent Court, previous to carrying out his present intentions, I shall be exceedingly grateful; and His Excellency will have the satisfaction, of feeling, that he has allowed me the privilege of public explanation and defence, and has availed himself of unquestionable means of ascertaining the truth, before adopting the last measures. In the meantime, as I have never seen the proceedings or finding of the Court of Enquiry, I shall esteem it a favor, if I may be supplied with a copy of them.

I have, &c., &c.,

(Sd.) SCOTT JERVIS, *Captain,*

106th Light Infantry.

To

COLONEL LONGDEN, C.B.,

Adjutant General.

ADJUTANT GENERAL'S OFFICE,

HEAD QUARTERS, SIMLA,

26th May 1866.

SIR,

I am directed to acknowledge the receipt of your letter of the 25th May 1866, and to convey to you an expression of the Commander-in-Chief's regret that you should have added to the offences against discipline already committed by you, by now daring to call in question the impartiality, and therefore the honor, of a Court of Enquiry, composed of Officers of high rank on the General Staff of the Army.

2. I am to add that it is unusual to communicate the Proceedings of Courts of Enquiry to the accused, such Courts being assembled to aid the decision of the superior officer who orders them to be convened.

3. An officer, when before such a Court, is at liberty to make his notes, or to cross-examine witnesses, which your contumacious conduct apparently prevented you from doing.

4. His Excellency sees no reason for departing from established precedent in this matter; the fullest opportunity of enquiry having been given you, of which you did not choose to avail yourself, either at the Court of Enquiry, presided over by Colonel D. M. Stewart, Deputy Adjutant General, or at the, Committee of Audit of Accounts.

5. The Commander-in-Chief apprehends that it would be as unusual as purposeless, to consent to any further investigation not having the sanction of an oath, or in which you cannot be compelled to plead.

6. The social and domestic breach committed towards His Excellency, with regard to the alleged Farm, which he has been disposed to look on as a very grave indiscretion, rendering the cessation of your connection with the personal Staff of the Commander-in-Chief necessary, sinks into utter insignificance, when compared with the terrible imputations, of which His Excellency had hoped so earnestly that you would free yourself, with the help of the friendly Committee of Audit, and which you have deliberately declined to do.

7. His Excellency directs me again to remind you, that you have not yet complied with his military order "to surrender all books, papers, letters, bills, and receipts, which purport to have regard to His Excellency's accounts," as conveyed in the Memorandum by the Commander-in-Chief, dated the 14th May 1866, which was forwarded to you with my Memorandum, dated 15th idem.

I have the honor to be,
Sir,
Your most obedient humble servant,
H. E. LONGDEN, COLONEL,
Adjutant General.

SIMLA, 28*th May*, 1866.

SIR,

Unwilling as I am to tresspass on His Excellency Sir W. Mansfield's time by any further correspondence, I yet consider it a sacred duty which I owe to myself, to submit with the greatest deference some remarks on your letter of the 26th instant.

And, in the first place, I would most earnestly disclaim all idea or intention of impugning the honor of the members of His Excellency's Staff, who composed the Court of Enquiry. This intention I carefully disavowed in my former communication, and now beg emphatically to reiterate that disavowal.

In soliciting the formation of another Court of Enquiry, and in usuing the words "impartial" and "independent," I referred solely to the observations made by His Excellency himself, viz., that the Court had been composed of members of the Staff, for the purpose of conducting a confidential enquiry, and preventing the matter transpiring beyond His Excellency's immediate circle.

From this I naturally concluded, that had not *privacy* been the object, His Excellency would *not* have made such a selection, but have rather chosen officers, who could come to the enquiry with minds and judgements altogether unbiassed by previous communication with His Excellency, or previous participation in the discussion. In this sense only, did I use the words quoted, and in this sense only, did I refer to the proceedings of the Court which had already been convened.

It is no disparagement to the most honorable man in the world, to suppose that he must be more or less biassed by having heard one side of a question, especially from the party whose avowed object is to support that side; it is but a necessity of human nature that the members of Sir W. Mansfield's Staff should be more or less impressed by His Excellency's own views, when they had been recorded in the forcible terms, in which His Excellency's Minutes had been expressed.

In this sense, without having the slightest reference to motive, or intention, I submitted my request for a second enquiry, the members of which, now that the object of privacy no longer existed, might enter upon the preliminary investigation of the serious charges brought against me, with minds altogether free from any bias whatever, and undisturbed by any previous impression or idea, derived from extraneous circumstances.

I trust this explanation will relieve me, in His Excellency's mind, from the serious imputation of having impugned the honor of any one concerned.

With regard to your remark, that my contumacious conduct apparently prevented me from taking notes, or cross examining the witnesses at the Court, I would also respectfully deprecate this animadversion. It was not, I submit, *contumacy* but simple *prudence* that prevented my taking part in the Proceedings in the absence of Counsel, and even the Military offence which I now see with regret that I did commit, in leaving the Court, was committed, as I have already explained, under a misunderstanding of the Regulations, and at the same time under sudden feelings of honest indignation, which I found it, at the moment, impossible to control. For this act, I have already submitted an humble and unreserved apology, and should have hoped that, under these circumstances, such an act might have been condoned.

In the 5th para. of your letter, you say the Commander-in-Chief apprehends "that it "would be as unusual as purposeless to consent to any further investigation not having the sanc- "tion of an oath, and in which you cannot be compelled to plead."

If I may be allowed to offer a comment upon this, I would respectfully submit, that neither of these objections touch the object for which I solicit further enquiry: if the absence of an oath's sanction has not prevented an adverse finding, it cannot vitiate, or interfere with a finding that is favourable; while in regard to the objection that I cannot "be compelled to plead," I would respectfully remind His Excellency that it is for the express purpose of enabling me to plead, that I submit the request.

The 6th para. of your letter, is in some respects a source of unfeigned satisfaction, inasmuch as the matter of the farm, which had previously been designated as a serious offence and treated apparently as a misfeasance "fatal to my character" and of such magnitude as to call for a Military Court of Enquiry, and to justify my ignominious dismissal from the Staff, is in consequence, I hope, of the explanation submitted, characterised by His Excellency Sir W. Mansfield as only "a social and domestic breach."

What "the terrible imputations" are, to which His Excellency refers, I am unfortunately ignorant: but from the allusion made in the last portion of the para. I conclude it has reference to accounts.

As, however, these accounts, are avowedly imperfect, it is I apprehend, impossible that any other ground can exist for these imputations, save vague suspicion only.

I am prepared to take a solemn affidavit to the effect that these and all other accounts kept by me, are (errors excepted) entirely correct; and if my books and papers, now in the hands of the Committee, are restored to me, I pledge myself to close and present them, when they can be subjected to any scrutiny which Sir W. Mansfield may institute.

With aegard to the delivery to the Committee of the other books and papers in my possession connected with these accounts, I regret, I must, notwithstanding His Excellency commands, decline to give them up.

I cannot bring myself to see or believe that such a delivery in the present crisis, can form any part of my Military duty: or that His Excellency Sir W. Mansfield's order can be regarded in the eye of the law as a Military order. Those papers are the only proofs that I possess of Sir William Mansfield's liability to me for a considerable sum of money expended by me on His Excellency's account and now due to me. They also form proofs of the accuracy of my accounts, and the integrity of my dealings. And on this ground, I claim a lien upon them until I have done this, as, in the event of my being driven to sue for the balance due in a Civil Court, they are the only proofs that I possess.

His Excellency Sir W. Mansfield, has been pleased to refer to the "Friendly Committee," which has been appointed to help me out of my difficulties; but I would respectfully remind His Excellency of the warning given to me, that anything I said, would, by this very Committee, be noted down, and used as evidence against me.

I must be forgiven if I fail to recognise in such a Committee, any element of friendliness, or if I object, so far as I legitimately may, to the cruel indignity offered me by such a proposed ordeal.

I again repeat my offer to close and present the accounts, if allowed the means of doing so. I solemnly assert that my accounts in every department are correct, and am prepared to make an affidavit to that purport.

In conclusion, I humbly trust His Excellency will graciously re-consider the application for further enquiry: an enquiry so conducted, as to satisfy His Excellency himself, that the finding, whatever it may be, has been entirely unbiassed, either by previous communication, imperfect impressions, or preoccupied judgement.

(Sd.) SCOTT JERVIS, *Captain*,
106*th Light Infantry*.

COLONEL LONGDEN, C. B.,
Adjutant General.

Q.—May I now ask Your Excellency how I insulted your Excellency as Commander-in-Chief by this application?

A.—I consider that it was an insult, and that opinion is not shaken by the very ingenious letter suggested to him by his Counsel.

Q.—Will your Excellency explain distinctly how such an application was an insult to your Excellency as Commander-in-Chief,—the accusation is a very grave one, and unless I am able to comprehend it, I cannot meet it

A.—Simply that he accused me of assembling a Court of Enquiry which was biassed against him; I consider that he knew he was stating a deliberate falsehood. (The prisoner here rose and threw himself upon the protection of the Court, upon which he was assured by the President that he might rely on its justice.)

Reply Continued.—I think that the prisoner, having been for three and a half years about me, must have known that it was absolutely contrary to my nature to assemble a Court of Enquiry for the purpose of convicting him, when it was alleged to have been convened with a view to ascertain whether justice had been done or not; I consider that there is a suggestion of untruth, running through both the letters, which have been read by him, in which he tries to make out that three Officers of high rank on the Head Quarters Staff of the Army, or on my Staff, were under my influence, when he must have known that these officers were chosen for their independence of me.

PRESIDENT.—(Who had evidently during the latter part of witness's answer been reflecting over the previous portion, and who spoke with a dignity and deliberation which produced a profound impression upon the whole assembly)—Your Excellency,—The prisoner has asked for the protection of the Court; it is the wish of the Court,—that wish I now express on the part of the Court,—that your Excellency should, in your evidence, refrain from all expressions and remarks distressing to the prisoner, which lead to irrelevant enquiries.

WITNESS.—(With evident emotion)—Mr. President,—I say with the greatest respect to you and the Court, that for several days I have had to undergo a fire of the most insidious questions, and my anxiety has been to shield myself from the effect of those questions, which would never have been allowed, had the Prosecution been assisted by an accomplished lawyer as is the case with the Prisoner's Counsel.

PRESIDENT.—I can assure Your Excellency, the Court sympathises most keenly with the very painful position in which your Excellency is placed; but it was as much for the protection of Your Excellency's own character with reference to matters before the Court, as to do justice to the prisoner, that the remark was made. The Court hopes your Excellency will take these observations in the spirit in which they are offered.

The Court then adjourned, at 4 P. M., till Friday, 6th July 1866, at 11 A. M.

VIIIth DAY'S PROCEEDINGS.

Court re-assembled at 11 A.M., *on Friday, 6th July* 1866.

Cross-examination by Prisoner, of Sir William Mansfield, K. C. B., K. S. I.,—(*continued.*)

PROSECUTOR.—Mr. President and Gentlemen.—At the present peculiar stage of the proceedings, when the witness before the Court has been checked and interrupted in the course of his reply to a question put by the prisoner, I would respectfully submit for the Court's consideration, whether the answer of the witness was not, notwithstanding their first impression, the necessary result of an irregular cross-examination, addressed to opinions and grounds of opinions, instead of to facts. I would, therefore, respectfully request the Court to submit the following questions for the opinion of the Judge Advocate-General:—

First.—Whether a cross-examination is legitimate if directed not to facts, but to opinions, and to the grounds of opinions.

Second.—Whether, if a witness be examined as to an opinion, or the grounds of an opinion, the only answer such witness can give, in conformity with his oath, must no, consist of the statement of this opinion, or ground of opinion, just as it was actually formedt and whether it be right or wrong.

Third.—Whether, if a witness be cross-examined as aforesaid, the answer must not be at the absolute risk of the person putting the question, and whether it does not follow that if the answer received be unfavorable or distasteful to the person putting the question, the proper course for such person is to blame himself and not claim the protection of the Court.

I would beg to add, that I am advised, such reference to the Judge Advocate-General for his opinion, is in accordance with precedent. The Court will, I trust, understand that the prosecution has no wish to interrupt the proceedings.

Court closed,

DEPUTY JUDGE-ADVOCATE, at the request of the Court, expressed his opinion on the several points proposed to the Judge Advocate-General as follows:—

First.—As a general rule, a cross-examination should not be directed otherwise than to facts; but in this case opinions have been expressed in the examination in chief, and as far as those opinions have been referred to, cross-examination on them appears legitimate.

Second.—If a witness is questioned as to the manner in which he had formed an opinion, he can only reply by stating the grounds of his opinion as they presented themselves to his own mind, irrespective of the question of those grounds appearing right or wrong to any other person.

Third.—It appears impossible for any person to speak on oath, to be directed or guided in the statement of the grounds of his opinion; consequently, if the statement is distasteful to the person putting the question, it is a matter beyond help or control.

COURT.—Having carefully considered the statements put in by the Prosecution, and the observations on the same by its Judge-Advocate, determined that it is unnecessary to stay the proceedings for a reference to the Judge Advocate-General. The Court assume the responsibility of checking the cross-examination when such a course appears advisable.

Court directs correspondence to be read.

WITNESS.—When leave was given for certain correspondence to be read, I imagined that prisoner referred to notes passing between him and his brother Aides-de-Camp. I now find that he meant something absolutely different, namely, a correspondence which ended in his being rebuked and set right in what appeared to me to be an impropriety. The matter is absolutely irrelevant, so far as I can understand, to the question before the Court; but as leave has been given to read it, I have no objection to it myself.

The following correspondence was then read:—

"*Simla. 13th April*, 1866.

"MY DEAR JERVIS.—As it appears, your notions and mine about the clothing of horses and certain points of stable management do not agree, I have this morning drawn up a few short rules which I wish to be observed in the matter concerned.

" The horses have certainly come up in a very insufficient state of clothing on this occasion. The same thing occurred when I left Bombay for Scinde in February 1865, and again when I undertook my march in the autumn. On each occasion I expressed annoyance and ordered fresh clothing to be bought instantly. This must convince you that you were under error, the day before yesterday, when you asserted that the horses had never more than a single blanket. This may be your system, but it is certainly not mine, and I consider it to be fatal to horses in any climate in India. When I used to look after these things more than I do now, my rule was to have a *jhool* of three thickness, viz., two blankets and a lining, besides a separate blanket. This was especially attended to in the Bombay Presidency to meet the contingency of land wind.

" I do not know why watering bridles have been abolished in the stable. It is unsafe to trust horses to be without bridles. The deficiency must be at once supplied.

" I think, perhaps, it would be well for you to resolve whether you do not undertake too much in wishing to have the stable in your hands, as well as the other things connected with the establishment. There is so much to do, and so many different details to attend to, that I have great doubts in my mind whether it is fair to yourself to tax you with the stable in addition to everything else. This becomes the more apparent, now that her Ladyship has returned to India, owing to which the change from a bachelor establishment adds a good deal to the things to be attended to. The point urged by you, about the necessity of having all the servants under one hand, is not of any consequence, as the stable people would have to be paid on any day named by yourself as a matter of routine, the Officer in charge of the stables keeping a list by which any charges or casualties amongst the stable servants would be shown. The Officer in charge would be responsible for petty expenses and the forage bills, and would receive the monthly amount from you, on requisition; the amount appearing in the gross in your books. Perhaps it might even sbe well that the Officer in charge should receive the stable wages in the gross, and pay the stable ervants himself.

" I recommend you to think over this which I am sure you will understand is not meant in any way as a reflection on you. For, on the contrary, I am delighted to take this opportunity of acknowledging the care and zeal you bestow in the management of my affairs.

" If, on reflection, you should be disposed to concur in the idea, that it may be well to give up the stables, I think I shall ask Gordon to take charge of them, who seems to have a great turn for horses. The division of labour would then be as follows:—The charge of the house to rest with you, under Lady Mansfield, which includes all the new business of the estate, building, &c., &c., and the Mahassoo arrangements; Harbord to have charge of the visiting books, and to be responsible for all invitations, parties, and so forth; Gordon to take charge of the stables, and all the details connected with them.

" In this way, there will be a proper division of labour, which will enable you all to attend to the demands of society and to your own amusements, without anyone absolutely escaping a little work.

Yours very truly,

(Signed) W. R. M."

" RULES FOR STABLE MANAGEMENT.

" 1. The first principle in Stable Management is, that every horse should be supplied with ample clothing to meet change of temperature.

" 2. Therefore, in addition to the suit of English clothing, each horse should have three good blankets, the same being either separate or made up in *jhool*.

" 3. When a horse moves, he should carry the whole of his clothing with him, both English and native.

" 4. Every horse must be provided with halter and watering bridle.

" 5. All exercising is to take place in bridle.

" 6. Weekly inspections of the kit of each horse should take place; no old blanket, &c., being made away with, till replaced under orders.

" 7. As far as possible, each horse should be provided with Saddle and Bridle, which should always move with the horse in question in the same way as the clothing. In fact, on the march, the horse should carry his entire kit.

" When put in a Railway, the Saddle, Bridle, and English clothing, may be made up in a bundle, duly labelled, and carried in the Luggage Van as luggage, till the end of the Railway trip, after which the syce will recover it and carry it as aforesaid.

"(Signed.) W. R. M."

" 13*th April* 1866."

" My dear Sir William.—I will not trouble you with a long explanation regarding your note of to-day's date. Allow me, however, to say, that I pointed out before, that the horses were supplied in Calcutta with the same amount of warm clothing they have always had since I have had charge of your stables; on leaving for Scinde in 1865, they likewise had the same amount, as also when they left this last year for Meerut. I state the above as a matter of fact. Any addition you wish me to make in that respect, as an allowance for change of climate, can of course be made at once.

" Whilst I have time on my hands, it offords me very great pleasure to be of use to you in looking after your establishment to the best of my ability. The post is no sinecure, if its duties are performed.

" I am prepared to do my best in assisting in the management of servants, or in carrying out any work handed over to me to perform.

" The separation of the charge of the stables, if my opinion is asked, is an arrangement which will most certainly not be satisfactory.

" I had considered the stable a pattern, the horses all that could be wished for as to condition and am beyond measure sorry to learn that Lady Mansfield and yourself are not satisfied with what has been done.

" I do not know to what extent it is your intention to call upon Gordon to perform the duties of an Aide-de Camp, but I would ask your permission to allow either Gordon or Harbord to take over the management of the entire establishment. I must beg of you to understand that I am not making this proposal in any other spirit than a desire to see everything done in a manner which will conduce in the utmost to your convenience, as also that of Lady Mansfield.

Yours very truly,

(Signed.) SCOTT JERVIS.

Woodville, 13*th April* 1866."

" Memorandum of Orders for Captain Jervis' Guidance by the Commander-in-Chief.

" *Simla*, 14*th April* 1866.

" When the Commander-in-Chief is at the pains, with much patience, to explain what he considers to be a mistake in the management of a part of the establishment, His Excellency does not expect to be met by one of his Personal Staff, in what is meant to be a flat contradiction on very obvious matters of fact.

" His Excellency, therefore, regrets that Captain Jervis has thought fit to continue a discussion on the matter of what His Excellency had found fault with, when all that remained to be done was to act on the orders given for future guidance.

" Captain Jervis has clearly misapprehended the point at issue. The Commander-in-Chief has several times—three times within the last fifteen months—found fault with an injudicious arrangement, by which the horses, when started on a journey, are sent without sufficient clothing to encounter dangerous changes of temperature when on the march. Three times has the Commander-in-Chief himself temporarily corrected the evil, as he has already been at the trouble of showing to Captain Jervis. In His Excellency's mind, the mistake of management is so obvious, that he fails to comprehend how any one can attempt to defend it, especially one who has the amplest discretion afforded him for supplying the horses with proper necessaries.

" It is this, however, which Captain Jervis has done, by an appeal to precedent, which is out of place in the consideration of such matters; and further, which, in His Excellency's opinion, proceeds from Captain Jervis' imagination, as forming part of his views of stable management.

" If Captain Jervis distrusted the impressions of His Excellency in this matter, it would have been better not to argue in any case, but it would at least have been prudent for him to have

sought to correct his own recollection, by a reference to Major Flood, who preceded Captain Jervis in the management of the Commander-in-Chief's establishment.

" His Excellency does not understand that an Aide-de-Camp, more than any other Staff Officer, can propose to resign the performance of the duties marked out for him. He is on the Personal Staff for the purpose of performing such duties as are allotted to him. It is not expected that any place on the Personal Staff is to be a sinecure. The allotted functions are duties which cannot be taken up and laid down to suit the caprices of a particular Officer, and they are not accepted as matters of favor from the subordinate, which might be gathered to be Captain Jervis' opinion from the second paragraph of his letter of yesterday.

" The Commander-in-Chief now desires that the duties of his establishment be distributed among the three Aides-de-Camp, in the manner indicated in His Excellency's private note to Captain Jervis of yesterday.

" Captain Jervis will, therefore, be good enough to make over the stable to Major Gordon as an entirely separate charge.

" Major Gordon has been this day informed by His Excellency that the Commander-in-Chief wishes him to undertake this duty.

(Signed.) W. R. M."

" My dear Sir William,—I have read your memo. written in reply to my answer to your note of yesterday. I am, apart from the subject of it, annoyed beyond measure to think that I should be the cause of your time being taken up in carrying on a correspondence with me, relative to any assistance I have endeavoured to give in the management of your sstablishment. My attempt to serve you in this manner has failed, and I never was more disappointed in my life, than when I became aware of the fact.

" Let me assure you, that I never intended anything I have written, as a contradiction of what may have been mentioned by yourself.

" Honestly, and once for all, I can only tell you that I have worked for you, as, from experience, I know very few men would have done.

" I do not reply in detail to your memo. of to-day, or to your note of yesterday. Had you put me the question, I would have convinced you that, even to the arrangement for extra clothing regarding which the present correspondence commenced, everything had been arranged for, when it would be required. But I say no more. You have no longer that confidence in me which I imagined existed, and without which I could never work.

" As I long since had occasion to point out, it is of little consequence to you whether I continue in the position I have filled for several years, or whether you declare that you no longer require my services; to me it is ruin, you are as well aware as I am myself.

" I wish, and believe me I say so with all sincerity, to give you every assistance, so far as in my small way is in my power.

" I am now, I am convinced, giving you annoyance, and sooner than believe that anything I did so engaged your attention, I would ask your leave to resign my appointment, if my doing so necessitated my breaking stones on the roadway.

" I have, as you requested, handed over the stable to Gordon, and must ask you to tell me to whom I am to hand over the rest of the establishment.

" I am distressed, but not angry. I have my own ideas as to how the present difficulty originated, but on this point I am silent for ever.

" With your permisson I will change places with Harbord, and look after the visiting book, &c., but I entreat of you not to ask me to continue the management of the establishment, for I could *never* undertake it again.

" I do not think there is anything in this note to which you will object. It is candid, and I wish it to be so. But I assure you it is intended by me that it should convey to you a simple reply to your memo., with an assurance that it contains no more than I feel I am at least doing my duty in stating. Let me, if necessary, anticipate any objection you may perhaps take to it by peclaring that it is written in strict good faith. I would on no account give you annoyance.

" I accept cheerfully any decision you arrive at regarding my request to be relieved of the charge of the establishment, which charge I am anxious to be relieved of in a manner giving you the least possible inconvenience.

" Let me beg the favor of your destroying this note after reading it.

I have, &c.,

(Signed.) SCOTT JERVIS,

WOODVILLE, 14*th April* 1866.

" *From Major* F. FLOOD, *Military Secretary, to Captain* E. S. JERVIS, *Aide-de-Camp to His Excellency the Commander-in-Chief, dated Simla, the* 15*th April* 1866.

" SIR,—I am directed to forward you officially the accompanying Memorandum by the Commander-in-Chief, and in doing so, to inform you, that it is Sir William Mansfield's positive order that you do not again address His Excellency direct in this matter."

" MEMORAMDUM.

" The Commander-in-Chief having intimated to Captain Jervis by formal orders the duties His Excellency desires Captain Jervis to perform, His Excellency is surprised at receiving a long letter marked private, in which Captain Jervis desires again to be relieved of those duties and asks to whom he is to transfer them, notwithstanding His Excellency's injunction to the contrary.

" There is a great deal in this letter showing strange ignorance of his position, on the part of Captain Jervis, which His Excellency regrets to observe.

" When the Commander-in-Chief issues formal orders, he does not admit the right of any Officer on the Staff to address him confidentially or privately on the subject of the orders concerned, or to assume that those orders can be lightly set aside.

" Captain Jervis must recollect that his condition is one of Military service, so long as he occupies the post, and not one of voluntary assistance, as he seems to think.

" Captain Jervis must not talk to His Excellency about having lost the Commander-in-Chief's confidence, &c., &c., as being a reason for his requesting to give up duties which have been allotted to him.

" When the confidence of the Commander-in-Chief in an Officer is forfeited, it is His Excellency's habit to say so, and act on it. Captain Jervis must be aware of more than one instance of His Excellency's practice on such occasions, during his tenure of office in the Commander-in-Chief house, which led to the immediate dismissal of one Officer, and to the relief from responsible charge of another.

" Captain Jervis has committed a serious impropriety in his last letter, in his insinuation that the Commander-in-Chief may have been influenced improperly against him.

" There is not the slightest ground for such insinuation, either in fact, or in the recent communication of the Commander-in-Chief.

" The Commander-in-Chief must decline any further correspondence as to his orders in any manner.

" Captain Jervis must know, that when His Excellency gives orders, it is not without due reflection and regard to consistency; change of intention being, under such circumstances, almost an impossibility. His Excellency has not time for arguments or correspondence, when he may order a change of practice or intimate his disapproval of a mistake or irregularity.

" With respect to the above, the Commander-in-Chief will not object to meet Captain Jervis on his old terms of familiarity, but it must be on the understanding that orders are accepted, acted on, and performed, without cavil or correspondence, and that when those orders may be disagreeable or annoying to Captain Jervis, he is to put aside his own feelings; the questions concerned being such as affect the Commander-in-Chief, and not the personal convenience or wishes of the Officer charged with execution.

" It is not the first time that the Commander-in-Chief has had to put Captain Jervis right in the very important matter of his position and immediate attention to orders. Captain Jervis will recollect that this occasion is the last on which His Excellency will exercise forbearence.

" His Excellency is sorry to have to speak out in this manner, but he has been obliged to do so by the apparent determination of Captain Jervis not to comprehend his Military position towards the Commander-in-Chief, or the necessity of immediate compliance with His Excellency's wishes, whether expressed in the kindest and most forbearing manner, or in the form of an order. Both these means have been used on the present occasion in vain.

" It is always His Excellency's pleasure in his own establishment to veil the harhness of Military command, under the forms and courtesy of familiar intercourse, and it is painful to him to act otherwise, as compelled on the present occasion.

(Signed.) W. R. M.

15*th April* 1866.

From Captain E. S. JERVIS, *H. M.'s* 106*th Foot, to Major* F. R. S. FLOOD, *Military Secretary to His Excellency the Commander-in-Chief in India, dated Simla,* 16*th April* 1866.

" SIR,—I am in receipt of your letter of yesterday's date, as also a memo. you enclosed of His Excellency the Commander-in-Chief's, directing me to understand that I am to continue in charge of Sir William Mansfield's establishment as a Military duty.

" You will oblige me by conveying to the Commander-in-Chief, an assurance on my part, that I very much regret that I should have caused His Excellency any annoyance with reference to my holding this charge, which I now view in a different light from that in which I looked upon it till very recently.

" It was indeed far from any intention of mine, that anything I may have written should have been so interpreted as to be the cause of a result no less annoying to myself than I am informed that it has been to His Excellency Sir William Mansfield."

WITNESS.—That is not the whole of the correspondence; there are two or three more letters.

COURT.—Have you got the memo. referred to?

A.—No, there was only one copy circulated to the whole of the Staff, Major Flood must have it.

PRISONER.—Requests that the correspondence with Monteith and Co., and Mackenzie, Lyall, and Co., may also be produced and read.

WITNESS.—I have already stated to the Court that I will direct Major Gordon to bring it with him when he appears as a witness.

Q.—Does not Military law itself allow prisoners to challenge members of a Court Martial, and prohibit members of Courts of Enquiry from sitting on Courts Martial? and on what principle are these things regulated?

WITNESS.—Does the Court require me to answer such questions?

Court closed. Court opened. Court considers that it is matter on which it is itself competent to decide, and disallows the question.

Cross-examination closed.

Re-examination by Prosecutor.

Q.—In this note of the 14th May to Major Flood, the prisoner had stated that all the accusations brought against him at the Court of Enquiry, were untrue, and he begged that your Excellency would ask him questions and he would explain all. Will your Excellency state why you did not accede to the prisoner's prayer?

A.—The business was not really in my hands, except for formal examination; considering the very serious nature of the allegations made against the prisoner, I did what I could to meet his wishes, by ordering a Confidential Committee of Audit, which, in reference to the Memo. conveyed by the Adjutant-General, was a bridge for him out of his difficulties, if he could show the absence of dishonest intention. I will ask the Judge Advocate to read the last paragraphs of the said Memo. of 14th May.

(*Here read out.*)

" 6.—He, being under arrest, will daily attend at the Military Secretary's Office, for the purpose of assisting the Military Secretary, Major Gordon, and an Officer to be named by the Adjutant-General from his department, in unravelling the accounts, and so make a real and honorable attempt to relieve himself, Captain Jervis, from the frightful imputations under which he now labours.

"7.—Every opportunity will thus be afforded to him of righting himself if possible."

Q.—In the correspondence which has been produced in your examination in chief, it is stated by the prisoner, in one of his letters, that he was warned that anything that he might say before the Committee of Audit would be brought against him. State if the allegation is correct, and if so, why the warning was given?

A.—It is true the prisoner had been placed in arrest for Breach of Trust, and he had been warned; but I reserved to myself the right of prosecuting him on a charge of Criminal Breach of Trust. The Committee of Audit was theretore, while friendly to the prisoner, as above stated, nevertheless such a formal investigation as, in the exercise of my responsibility, I was bound to order; if the omission had been made of not warning the prisoner, that what might be elicited might be used in evidence against him, it is obvious that anything that might have transpired at the Committee of Audit would have been useless for purposes of justice. What was done, therefore, was not for the purpose of intimidating or of setting prisoner against the investigation which had been ordered, but a procedure strictly in accordance, as I understand, with the Standing Orders of the Army.

Q.—From your experience as Chief of the Staff, and in other positions, can your Excellency say whether it was the custom of Lord Clyde, and other Officers in high command, to employ Aides-de-Camp in so-called social and domestic duties as a necessary consequence of their appointment?

A.—Yes.

Q.—Is it a well-established and understood Military custom, binding those under Military authority, as a regulation of the Service?

A.—Yes, in accordance with Standing Orders and Military rules of discipline.

Re-examination by Prosecutor, closed.

COURT.—Q.—Your Excellency has stated in one of your replies, that a Bill was sent back to Mackenzie, Lyall and Co., for correction, and it was returned corrected. Will your Excellency explain what you mean?

A.—What was meant, was that a Bill was received at the house, so far as I can recollect, testifying to the amount of Mackenzie, Lyall's, Bill; but items not being fully stated, it was thought right, before sending the money, to call for the Bill in full detail.

Q.—Were there any items in the Bill which your Excellency did not recognise as belonging to your own account?

A.—No; though it did not appear to be quite correct.

Examination by Court, closed.

Major F. R. S. Flood, 82nd Foot, Military Secretary, was sworn and examined by Prosecutor.

Q.—Did you write this Memorandum for the Commander-in-Chief, and did you furnish it to the Prisoner?

A.—The Commander-in-Chief wrote this Memo., and I furnished it to the prisoner on the 31st May 1866.

Q.—Have you ever been in charge of His Excellency Sir William Mansfield's household, and state when, how, and to whom you made over charge?

A.—I was in charge of His Excellency Sir William Mansfield's household in the Bombay Presidency, from the month of April 1862 up to the 1st May 1863, on which latter date prisoner took it over from me.

Q.—Is this the book kept by you when in charge?

A.—Yes.

Q.—Describe the book.

A.—This was the chief book kept of those which allude to the establishment, and shows the money received by the Officer in charge of the household, and explains the way in which it was expended. This book was closed monthly.

Q.—What name did it go by?

A.—It was called the Ledger—I don't know whether it is the correct name for it or not; but we called it the Ledger.

Q.—Were all the sums, when and how received on account of His Excellency, immediately entered in this book?

A.—Always as received.

Q.—At the end of the month, were balances generally shown in favor of the Commander-in-Chief or to his debit?

A.—During the twelve months I had charge of the household, I observe a balance in hand for ten of these months; in the remaining two months, unaccounted for, there is a balance shown as due on the other side, very small sums, viz., in one month, rupees thirty-three-odd; and in the other month rupees fourteen-odd.

Q.—When you had no money in hand on account of the Commander-in-Chief, what course did you pursue?

A.—I paid no more bills.

Q.—If ever money was absolutely required, did you advance it yourself, or did you ask the Commander-in-Chief for it?

A.—I don't think I ever should have advanced money myself; I should have gone to the Commander-in-Chief for more money.

Q.—Was that book kept solely by yourself, and if not, specify other Officers by whom it was kept?

A.—That book was handed over to me by Colonel Kirby, and handed over by me to the prisoner.

Q.—Between what dates does it show the Commander-in-Chief's accounts?

A.—From 1st August 1860 to end of August 1863.

Q.—Examine the book and explain the system as kept up by the three officers named.

A.—Four months of the prisoner's incumbency, of which this book shows the accounts, appear to have been carried on, on the same system: mine and Colonel Kirby's system were precisely the same.

Court adjourned at 4 P.M., till Saturday 7th July at 11 A.M.

IXTH DAY'S PROCEEDINGS.

Court re-assembled at 11 A.M., *on Saturday 7th July* 1866.

Examination of Major Flood, Military Secretary,—(*continued.*)

Q.—When did prisoner cease to have charge of the household this year?

A.—Beginning of May. I am not quite certain.

Q.—What is this book, and by whom kept?

A.—This is the continuation of the book I yesterday called a Ledger, and kept by prisoner from September 1863 to April 1865.

Q.—Does the system continued in this book, correspond with the other?

A.—Yes.

Q.—What book is this, and by whom kept?

A.—This apparently is also a Ledger, kept in the first instance by Captain Chistie, from February 1865, to September 1865, when it was taken over by prisoner, and kept from that date by him.

Q.—Does it correspond in system with the other two?

A.—The general system is apparently the same.

Q.—Is the system carried on by prisoner since 1865 the same at that conducted in your time and in Colonel Kirby's time?

A.—I can't say they are exactly the same; they are apparently the same. I see figures here which must have referrence to other books, in which probably the detailed items may appear. In my time there was one book kept in which the items were shown.

Q.—Does that book, kept by the prisoner, purport to show entries on date of receipt of all monies received on account of the Commander-in-Chief?

A.—Yes.

Q.—Look at the former books, and say when this apparent change first becomes evident?

A.—The change of system is apparently—(Here witness hesitated and then continued.) This can hardly be called a change of system; the other books, to which the figures adverted to refer, probably took the place of bundles of vouchers kept in my time.

Q.—When does it first appear?

A.—In the month of April 1865.

Q.—Are the figures opposite each item consecutive, and are you sure that they refer to the number of the voucher corresponding?

A.—It is the first time I have seen the book. I really can't say. Yes, the numbers are consecutive, but there is no explanation of what they stand for.

Q.—When you kept the Ledger, when were each month's accounts closed?

A.—Immediately after the last day of each month.

Q.—According to the system of all these books, which you say are the same, should all receipts and disbursements on account of the Commander-in-Chief be shown on their exact dates?

A.—They should be.

Q.—Do you recognise any distinction between house and household books?

A.—No, I understand none.

Q.—What are the house books as you understand them?

A.—I think I can enumerate the books kept in my time; the butler had two books, one for daily expenses and one for sundry expenses; there was a Servant's Wages Book, and a Stable book; there was a Wine Account Book and a Store Account Book; there was an Inventory of Property Book, and a book in which open accounts with tradesmen both in England and in India were shown; there was a Letter Book, a Rough Diary, and what has been called a Ledger; all bills and receipts being kept as vouchers.

Q.—Was it your habit to keep up all books to date?

A.—Yes.

Q.—Will you describe that book to the Court, giving also first and last dates?

A.—This book dates from April 1860 to end of December 1861—at one end it shows consumption of wines and stores in each month, and at the other end of the book is shown the receipts and balances for each month of both wines and stores. This apparently is a Wine and Stores Account Book, all in one, and kept before I took over charge of the establishment.

Q.—Will you look and say whether the items of expenditure appear to be on account of His Excellency only—also, whether the receipts show any recoveries from others?

A.—The consumption appears to be exclusively on account of the Commander-in-Chief; the only receipt from any individual, except shopkeepers, is apparently for a dozen of Champagne from Mr. Samuel Mansfield.

Q.—Describe these papers to the Court.

A.—One of these papers is an account of consumption of wines and stores from November 4th to December 12th 1861, when His Excellency was marching through the Southern Mahratta country; the other papers, being consumption of wines and stores from 22nd December 1862 to 31st March 1863, when His Excellency was marching through Guzerat and Rajpootana.

Q.—Will you examine them in the same manner as you did the last books?

A.—The whole consumption appears to be on account of His Excellency the Commander-in-Chief, with the exception of one item, when Colonel Phayre, Quarter-Master-General of the Bombay Army, was lent a tin of bacon.

Q.—Do you recognise the handwritings in which these papers are kept?

A.—A portion of them I do; they are in the handwriting of the first and third clerks of the Military Secretary's Office in Bombay; I recognise another hand writing, that of the second clerk.

Q.—Describe this book. What do the entries purport, and are they according to the system in vogue when you had charged of the household?

A.—Yes. They apparently are His Excellency's Wine and store account books from April 1865 to May 1866.

Q.—Look at the October page, and see whether the expenditure is shown to be on account of His Excellency or any one else?

A.—The whole of the expenditure appears to be on account of His Excellency.

Q.—If any other expenditure had been incurred than on His Excellency's account, would these pages show incorrect entries?

A.—Decidedly.

PRISONER.—This is a mere matter of opinion.

PROSECUTOR.—The witness was an authority and could therefore give an opinion, he having kept the books himself.

PRISONER.—Nevertheless it is a matter of opinion.

Q.—Look through this first Ledger and say whether any refunds or recoveries on account of His Excellency appear?

A.—Beyond the ordinary house expenses, I see only one or two instances of recoveries of money from Dr. Hadaway and Colonel Phayre, on account of mutton; those Officers, at their own request, and as a great favor, having been allowed to get this surplus mutton from the establishment, when a sheep was killed. On 22nd June 1861, Rs. 14 were recovered from Dr. Hadaway. On the 24th October 1861, there is an item of Rs. 45-6-0 on account of mutton from 30th September 1861 to 3rd November 1861. An item received from Colonel Phayre Rs. 48, to 30th September 1861. January 1862, two small items, Rs. 4-6, from Major Stock, and Rs. 8, from Colonel Thesiger, as farrier's expenses for shoeing their horses when on the line of march. Again, in February, there are two items of recovery on the same account viz., Rs. 1-4 from Colonel Phayre and Rs. 2-12 from Dr. Hadaway for shoeing their horses on the line of march. On the 3rd May 1862, there is a recovery from Dr. Hadaway of Rs. 17-14-4, for gram which he had had. On the 25th September 1862 there is a receipt of Rs. 70-4, from Dr. Hadaway on account of mutton supplied from 8th March to 22nd Septr. 1862, and on same date to Colonel Phayre on account of mut-

ton supplied from November 1861 to 22nd Septr. 1862, Rs. 76-12. On 18th November 1862 a recovery from Dr. Hadaway of Rs. 6-4 for mutton for September and October 1862. In February 1863 there are recoveries from certain Staff Officers for shoeing their horses when on the line of march—Colonel Stock, Rs. 6-12; Colonel Skinner, Rs. 8-4; Colonel Phayre, Rs. 3; Dr. Burrowes 1-8, and Mr. Howard, Rs. 4-8. In April 1863, there are recoveries from certain Staff Officers for shoeing their horses in February of that year, viz., Col. Stock Rs. 1-8, Mr. Howard Rs. 2-10, Colonel Skinner 12 annas, Dr. Burrowes Rs. 1-2. In May 1863, there is a recovery of Rs. 1-8, from Major Aitchison for shoeing his horse.

Q.—If any wines or stores had been sold on account of His Excellency, would the items have appeared in that book ?

A.—Certainly.

Q.—Your name appears in this book when you had charge, and also other names appear, as having made payments; will you now explain clearly the system on which mutton was allowed to be supplied ?

A.—His Excellency has always been in the habit of having a flock of sheep kept, on his own premises, for supply of his table. When a sheep was killed, it could not all be consumed in the house without spoiling; therefore certain intimate friends or Staff Officers were allowed to have the surplus as a favor to them, and to save waste. No sheep was ever killed, except for the use of His Excellency's household.

Q.—Can you explain the meaning of the refund on account of gram ?

A.—It must have been, I presume, a temporary convenience to that Officer, and that he could not obtain it anywhere else; on that date we were on the Mahableshwar Hills, where I know it was difficult to procure gram: we used to bring it out a distance of 20 miles.

Q.—Did you ever, while in charge, use His Excellency's wines and stores for your own purpose, or for that of others ?

A.—Never.

Q.—Will you explain the system of the household with regard to the provision of the table for the Aides-de-Camp ?

A.—The Aides-de-Camp lived as guests or members of the Commander-in-Chief's family, at His Excellency's table; there was no separate table kept for them.

Q.—Could the Aides-de-Camp get wines or stores from His Excellency when they gave parties, for instance, when they were not in attendance, or when they lived away from the house ?

A.—No

Q.—Was such a practice known as drawing on the cellars, and making refunds at a future date, and making such refund in money ?

A.—There was no such practice allowed; acts of neighbourly assistance were not prohibited by Commander-in-Chief, in fact they had His Excellency's sanction; but such acts of assistance, so far as I recollect, were very rare, and the articles were usually repaid in kind.

Q.—Has Captain Jervis, since he has taken charge in this Presidency, ever mentioned to you that he had helped himself to wines or stores either at Mahassoo or elsewhere ?

A.—No.

Q.—When Captain Jervis was at Mahassoo, was he in attendance on the Commander-in-Chief?

A.—No.

Q.—When not in actual attendance, it is usual for the Aides-de-Camp to live at His Excellency's expense ?

A.—No.

Q.—Is that a rule well understood ?

A.—It should be.

Q.—Has the prisoner ever mentioned to you that he had taken for his own use, articles of stable and horse-gear, which had been ordered in the name of the Commander-in-Chief?

A.—No.

Q.—When you were in charge of the household, would you have considered yourself justified, when making purchases for yourself or other Aides-de-Camp, in charging them to His Excellency's account ?

A.—No, I should not think it justifiable; and I do not remember an instance of it having been done.

Q.—Are you aware if during last cold weather, there were any Officers of the Staff. not including the prisoner, who received purchases, that were made in the name of the Commander-in-Chief?

A.—No, I am not.

Q.—When not in attendance, you have stated that the Aides-de-Camp are not provided at His Excellency's expense; will you now state whether, when travelling with His Excellency, their hotel expenses are paid?

A.—No.

Q.—Can you mention any particular occasions illustrating your answer, and that may have occurred lately?

A.—I myself, when travelling with the Commander-in-Chief, have never charged him with my hotel expenses, nor have I permitted others to do so, when I have been in control, viz., travelling to Calcutta last autumn, and back to Simla this spring.

Q.—When His Excellency came round from Bombay, and he was at the Umballa Hotel, were you referred to this subject by any of the Staff?

A.—To the best of my recollection, I was referred to by Captain Chistie; but I gave him my views on the subject, as shown in the preceding answer.

Q.—Did prisoner ever tell you that he had charged his expenses to His Excelleney, either in travelling to Calcutta last winter, or in returning last March?

A.—No, he did not.

Q.—You stated yesterday, that for the twelve months you were in charge of the household, during ten of those months a balance was in favor of the Commander-in-Chief at the end of each month, and that the other two months show a small debit; will you examine these three Ledgers, and state what may be the balances shown in them, for each month whether to debit or credit of the Commander-in-Chief?

A.—From August 1860 to April 1862, Colonel Kerby had charge of the household; there apparently was a balance in hand on the last day of each month, with one exception, the month of August 1861, when the account was exactly squared; and from 1st May 1863 to end of February 1865, during prisoners's incumbency, a balance in hand is shown each month: that refers to the establishment in the Bombay Presidency. During Captain Christie's charge, from March 1865 to end of August 1865, there also appears to be a balance in hand at the end of each month. For the months of September, October, and November, 1865, during which prisoner had charge of establishment, there is also shown a balance in hand each month. This book apparently shows no accounts of a later date.

Q.—Be good enough to state the estimated prices of the several wines and stores.

A.—The original Bills of wines and stores, not being found in the Commander-in-Chief's house, they are supposed to be in the possession of prisoner: a list has been prepared at His Excellency's request, which I can recapitulate:—

Value of Sherry	per bottle,	...	Rs.	2	8	Pate de Foie Gras	,,	Rs.	2 0
Port,	,,	...	,,	2	4	Truffles,	per tin	... ,,	1 4
Champagne,	,,	...	,,	3	8	Asparagus,	,,	... ,,	1 0
Sauterne,	,,	...	,,	2	0	Assorted Biscuits	,,	... ,,	1 8
Claret,	,,	...	,,	2	4	Vinegar,	per bottle	... ,,	0 8
Beer,	por dozen	...	,,	10	0	Mustard,	,,	... ,,	0 8
Brandy,	per bottle	...	,,	2	4	Salad Oil,	,,	... ,,	1 0
Maraschino,	,,	...	,,	2	0	Loaf Sugar,		... ,,	6 0
Curacoa,	,,	...	,,	2	0	Mixed Pickles,	per bottle	... ,,	0 12
Soda Water,	per dozen,	...	,,	2	0	Harvey Sauce,	,,	... ,,	1 4
Lemonade,	,,	...	,,	2	0	Worcestershire Sauce,		... ,,	0 12
Ham,	each tin	...	,,	14	0	Capers,	,,	... ,,	1 0
Bacon,	,,	...	,,	4	0	Mushrooms,	,,	... ,,	1 0
Tongue,	each	...	,,	3	0	Jam,	,,	... ,,	0 12
Salmon,	per tin	...	,,	1	2	Tart Fruits,	,,	... ,,	2 0
Oysters,	,,	...	,,	0	12	Apricots,	,,	... ,,	2 0
Sardines,	,,	...	,,	0	12	Plum Jam,	,,	... ,,	2 0
Giblet Soup,	,,	...	,,	1	0	Green Peas,	per tin	... ,,	2 0
Sausages,	per tin	...	,,	1	4	Coffee,		... ,,	8 0

Q.—Did you, by order of the Commander-in-Chief, order the prisoner to attend the Committee of Audit, of which you were President, on the 22nd May last: if so, produce the correspondence.

A.—I did, and this is the correspondence.

Following corespondence read out:

"22*nd May* 1866.

"MY DEAR JERVIS,—The Commander-in-Chief having directed that you are to furnish your accounts to my Committee, and forbids any further delay taking place, I am therefore to request that you will have the goodness to come to my quarters this day at half-past 11 o'clock for that purpose.

Truly yours,

(Sd.) FRED. FLOOD,"

"*Simla*, 22*nd May* 1866.

"DEAR FLOOD,—All Sir William's private accounts I could prepare, I have given him. If His Excellency will give me the books I asked for, I shall be obliged to him, as I can then complete the rest. My Counsel is in communication with Sir William, pending His Excellency's decision on this communication, I do not desire to attend your Military Committee for the purpose of laying before it, Sir William Mansfield's private accounts.

Very truly yours,

SCOTT JERVIS."

"22*nd May*, 1866.

"MY DEAR JERVIS,—The Committee of which I am President, has, as you are aware, been ordered by the Commander-in-Chief for the purpose of auditing his private accounts. Therefore, the notice I sent to you this morning to attend, is carrying out His Excellency's orders.

"I may inform you that the Commander-in-Chief has distinctly declined seeing Mr Tayler in the capacity of your Counsel; it being quite impossible for an Officer under arrest to communicate with his Military superiors by such a channel. The Committee has assembled and is awaiting your attendance.

Truly yours,

FRED. FLOOD."

"SIMLA, 22*nd May*, 1866.

"DEAR FLOOD,—The communication I refer to, is by letter, and can, of course, be forwarded through whatever channel Sir William may direct. Under the restrictions laid down in your letter to Mr. Tayler, the interview so graciously granted by Sir William, has been declined, under the impression that it would engage His Excellency's time to no purpose.

Very truly yours,

(Signed) SCOTT JERVIS."

PRISONER here desired that other correspondence on the subject may be read out, the above not being the whole of the correspondence.

Court closed. Court decides to continue the proceedings as proposed by the Prosecution, leaving it to the prisoner to have produced what correspondence he wishes in the cross-examination.

Q.—Did Captain Jervis attend the Committee on the 22nd May as ordered?

A.—No, he did not.

Q.—What did you then do?

A.—I reported that to the Adjutant-General.

Q.—Is this your report?

A.—Yes, it is.

The report was here read out, dated 22nd May, from Major Flood, Military Secretary, to the Adjutant-General, informing the Adjutant-General, in a few words, that prisoner had failed to attend the Committee of Audit.

DEPUTY JUDGE ADVOCATE.—The following letter was read yesterday, without the Memorandum referred to—I will read it again with the Memorandum.

Letter and Memorandum relating to the duties of Aides-de-Camp, were then read as follows :—

"*From Major* FREDERICK FLOOD, *Military Secretary, to Captain* E. S. JERVIS, *Aide-de-Camp, dated 24th April,* 1866.

"MY DEAR JERVIS,—You will receive for perusal a Memorandum written by His Excellency this day on the subject of Aide-de-Camp's duty.

"It will hardly be necessary to tell you that this Memorandum has been prompted by what His Excellency considers to be certain failures by you on this point.

"The Commander-in-Chief has requested me to say that he is quite tired of these constantly recurring little disagreeables, and that if you are not prepared in the fullest sense to accept your position of Aide-de-Camp, it would be better that you should leave His Excellency's Staff on friendly terms."

"MEMORANDUM *by His Excellency the* COMMANDER-IN-CHIEF *for communication to the* PERSONAL STAFF.

"An omission took place on the part of the Aide-de-Camp on duty yesterday.

"It was published that it was one of Lady Mansfield's days of personal reception.

"Many visitors having accordingly come for the purpose of waiting on Lady Mansfield, it seems to have been forgotten by the Aide-de-Camp in waiting, that it was part of his duty to usher in ladies or gentlemen who called, and to remain in the drawing-room while the visits lasted, performing his part in the entertainment of the visitors, and showing them out again.

"This rule, of course, especially applies to the days, Mondays and Thursdays, which have been announced by Lady Mansfield as days of reception.

"The servants should be instructed to take all Cards to the Aide-de-Camp in waiting, between 11 and 2 o'clock, who will take Lady Mansfield's instructions in the like manner as is done for the Commander-in-Chief. His Excellency also takes this opportunity of repeating the instruction he gave on a former occasion, that neither English or Native gentlemen, wishing for interviews, are ever to be refused on the responsibility of the Aide-de-Camp, and without reference to His Excellency.

"The Commander-in-Chief has learnt with great pain that, in the case of one of his Aides-de-Camps, the ordinary civility of calling upon families, who are in the habit of visiting at His Excellency's house, has been omitted.

"To his astonishment he has been informed, that such strange want of attention has been displayed towards even the ladies of the Officers on the Head-Quarters Staff of the Army, and of the Personal Staff.

"It is observed that, considering His Excellency's position and the social duties of an Aide-de-Camp, this amounts to neither more nor less than persistent discourtesy, and must be a never-ceasing cause of irritation to ladies visiting at the house.

"His Excellency says once for all, that he cannot permit such a state of things, now that it has come to his knowledge. No Officer is fit to be an Aide-de-Camp if it does not suit him to call generally on all the visiting acquaintances of His Excellency and Lady Mansfield, and to be on such terms of familiar courtesy as to be able to take his part in the general conversation of the dinner table and the drawing-room, with the ease of one on visiting terms.

"With regard to this point, and also to another about to be mentioned, the Commander-in-Chief desires that Captain Jervis' attention be drawn to the instructions for the Personal Staff issued by His Excellency a year ago.

"His Excellency desires to signify his disapproval of the disappearance of an Aide-de-Camp from the drawing-room after dinner before the departure of other guests.

"This, however unintentional, is a rudeness to the guests, and disrespectful to the lady of the house, unless there is a special engagement, which, in the ordinary course of society, should be mentioned to the latter.

"What has been referred to is the habit of a mess-room, and not of a private gentleman's house, still less of one in which, of necessity, a certain formality and extra attention on the part of the official household, is expected by the public.

"His Excellency is sorry to have to remark on such points, but he insists on the most practical execution of his former instructions, in which he regrets to say he has been obliged to notice failure.

(Sd.) W. R. M."

24*th April* 1866.

"Forwarded for the information and guidance of Major Gordon, Persian Interpreter and Aide-de-Camp; Captain Jervis,} Aide-de-Camp, and Captain the Hon'ble W. Harbord, Aide-de-Camp; who are requested to have the goodness to affix their initials below, as having read His Excellency's Memorandum.

By order,

(Sd.) FRED. FLOOD, *Major*,

Military Secretary.

24*th April* 1866."

"Seen—(Signed) T. E. Gordon, Scott Jervis, W. Harbord."

Examination by Prosecutor closed.

Cross-examination by Prisoner of Major Flood.

Q.—Are you aware of any correspondence having taken place between myself and Colonel Stewart regarding any of the books you have seen and described to-day?

A.—I have no personal knowledge of it.

Q.—Will you explain what you mean by "personal knowledge;" I asked you whether you were "aware" of the fact—what knowledge have you of the fact?

A.—I have no knowledge of it.

Q.—Did the Court of Enquiry make over any of these books?

A.—No, they did not.

Q.—Did the Court of Enquiry impound any of these books?

A.—I know nothing of the Court of Enquiry. I was merely a witness.

Q.—Were any of these books in the possession of the Committee of Audit?

A.—No, they were not.

Q.—What was the character of the Committee of Audit? Be so good as to describe it.

A.—It was a Confidential Committee, for the purpose of auditing His Excellency Sir William Mansfield's private accounts, as kept by prisoner from 1st September 1865; and for the purpose of allowing him an opportunity of making any explanation with regard to those accounts that he might wish.

Q.—Had any explanation been called for from me before the Committee was appointed?

A.—More than one opportunity for explanation had been given; the accounts had been called for.

Q.—Will you be so good as to answer the last question?

A.—I have already said the accounts had been called for; the prisoner had shown great backwardness in producing them. The Committee under reference was ultimately appointed.

Court adjourned at 4 P. M. till Monday July 9th, 1866, at 11 A. M.

XTH DAY'S PROCEEDINGS,

Court re-assembled at 11, A.M., *on Monday, 9th July* 1866.

Cross-examination of Major Flood, continued.

Q.—Was the correspondence that you have read, the whole of the correspondence, or were there not many other letters on the subject of the Committee of Audit?

A.—A considerable demi-official correspondence passed between me and the prisoner.

Q.—Was not an official examination submitted explaining why I was unwilling to attend it?

A.—I do not recollect receiving any letter, but the ones that have been read. I can verify any document sent to me.

PRISONER.—Here stated what letters he required to be produced.

PROSECUTOR.—Objected to the production of the correspondence.

PRISONER.—Stated, that as the correspondence, and no particular letter or letters, were called for, the impression conveyed would of necessity be a false one, if, when the whole correspondence was asked for, a portion of it only was produced.

Court closed. Court intimated that the correspondence would be received at this stage of the proceedings.

WITNESS.—I identify a letter from myself to prisoner, dated 15th May:—

From Major F. FLOOD, Military Secretary, to Captain E. S. JERVIS, H. M.'s 106th Foot, dated Simla, 15th May 1866.

"SIR,—As you are under arrest by order of the Commander-in-Chief, for matters already communicated to you by the Adjutant General, and further, as the audit of the accounts, the Committee, which has been ordered to assemble at my quarters at 12 o'clock to-morrow, is directed to undertake, assumes to a certain extent the form of an enquiry into your conduct, I am to warn you not to say anything which may be of prejudice to you hereafter, in case of His Excellency directing your trial by Court Martial or other tribunal.

"If, however, you should decline to give information on any points, a record will be made of the refusal. In short that whatever may be said or done before this Committe, is liable to be used in evidence against you."

A copy of letter from Prisoner, to myself, dated 15th May:—

"*Simla* 15*th May* 1866.

"MY DEAR FLOOD,—Please ask Sir William to give me a memo. of the cheques he has given me from 1st September last. I want to compare my account with it.

"Kindly also give me a memo. of the amounts you have sent me from September last, on account of pay for the chuprasees, to compare also.

"Perhaps you would also kindly mention that the house at Mahassoo is now at Sir William's disposal; my things, with the exception of an empty case or two, which will be removed to-morrow, having, my servants tell me, been all taken away.

(Signed) SCOTT JERVIS."

A copy of letter from Prisoner to myself, dated 16th May:—

"*Simla*, 16*th May* 1866.

"MY DEAR FLOOD,—Would you kindly postpone the meeting this afternoon till 3 o'clock. The Head Accountant of the 'United Bank of India,' who is making out Sir William's accounts, cannot get away earlier.

Very truly yours,

(Sd.) SCOTT JERVIS."

A letter from myself to Prisoner, dated 16th May:—

"*Simla*, 16*th May* 1866.

"MY DEAR JERVIS,—I don't quite understand from your note, whether you ask for a postponement of our meeting until 3 o'clock to-day, on account of your books, &c., not being ready, or because the Head Accountant of the United Bank of India cannot be present earlier.

"If the former, I must acquiesce in the delay; if the latter, I do not see that any postponement is necessary, as the presence before our Committee, of the individual alluded to, is not required.

(Sd.) FRED FLOOD."

A letter from myself to Prisoner, dated 18th May :—

Simla, 18th May 1866.

"MY DEAR JERVIS,—It having come to the knowledge of the Committee that there is a considerable number of documents connected with the building account, which were handed to you by Kedarnath Baboo, that you have not furnished us with, I, on the part of the Committee, beg that you will send them to us without delay.

"We hear of a 'daily Book,' detailed Bills for material, &c., with their receipt, &c., &c.

(Sd.) FRED. FLOOD."

Copy of a letter from Prisoner to myself, dated 19th May :—

Simla, 19th May 1866.

"MY DEAR FLOOD,—The Daily Book you ask for should be with the Clerk who takes the account every day.

"Your note was not given me, by mistake, till 8 o'clock last evening.

(Sd.) SCOTT JERVIS,

Copy of a letter from Prisoner to myself, dated 18th May :

"SIMLA, *18th May*, 1866.

"MY DEAR FLOOD,—Please send me over the books, &c., as soon as possible.

"Kindly ask Sir William to give me a cheque for balance due to me on the building account.

(Sd.) SCOTT JERVIS,"

Copy of a letter from myself to Prisoner, dated 18th May :—

"SIMLA, *18th May* 1866.

"MY DEAR JERVIS,—The books will not be sent to you. You will have access to them for the purpose of making up your accounts, but in the presence of my Committee, which also has to determine whether the balance, as stated by you to be due to you from the Commander-in-Chief, is correct.

"The vouchers handed in by you, as vouchers for your payments, being in the opinion of the Committee, no vouchers at all, with a few exceptions: the work has been imposed on the Committee of endeavouring to prove the payments which you state in your account have been made by you.

"We shall probably have to examine you further with regard to this account.

(Sd.) FRED. FLOOD."

Copy of a letter from Prisoner to myself, dated 19th May :

"SIMLA, *19th May* 1866.

MY DEAR FLOOD,—Please tell Sir William that I should feel obliged for a cheque, for the balance due to me on the account I gave you a few days ago. If it is not convenient to Sir William to give a cheque for the entire amount, please ask His Excellency to let me have a cheque for Rs. (1,000) one thousand, this afternoon.

(Sd.) SCOTT JERVIS,"

Copy of a letter from myself to Prisoner, dated 19th May :—

"SIMLA, 19*th May* 1866.

"MY DEAR JERVIS,—I replied to you on this subject yesterday; your building accounts have not been passed.—

(Sd.) FRED. FLOOD."

Copy of a letter from myself to Prisoner, dated 21st May :—

"SIMLA, 21*st May* 1866

"MY DEAR JERVIS,—On the part of Committee for auditing your accounts, I am to request you to have the goodness to come to my house this afternoon at 3 o'clock, for the purpose of answering some questions regarding the building accounts, and to commence the examination of your general accounts.

(Sd.) FRED. FLOOD,"

Copy of a letter from Prisoner to myself, dated 21st May :—

"SIMLA, 21*st May* 1866.

"DEAR FLOOD,—Pending the receipt of Sir William's reply to a letter addressed to His Excellency's Military Secretary, by my Counsel, to-day, I would express my wish that you will be so good as to postpone the meeting of the Committee announced to me in your note under reply just received.

(Sd.) SCOTT JERVIS."

Further a letter from myself to Prisoner, dated 21st May :—

"SIMLA, 21*st May* 1866, 3-30 P.M.

"MY DEAR JERVIS,—The Committee had assembled, but in consideration of the expressed wish in your note, just received, will not require your attendance until further notice.

(Sd.) FRED. FLOOD."

Letter from W. Tayler, Esq., to myself, dated 21st May :—

"From W. TAYLER, ESQ., to Major F. FLOOD, Military Secretary to His Excellency SIR W MANSFIELD, dated Kennedy House, the 21*st May* 1866.

"SIR,—Having been applied to by Captain Jervis to render him my professional assistance in the painful matters in which he is implicated, I take the liberty of asking, whether, before any further action is taken in the case, His Excellency Sir W. Mansfield would have any objection to allow me the honor of a personal interview with him, with a view to the discussion of one or two points which it is possible may not have suggested themselves to His Excellency or his advisers.

"My pricipal reason for asking this is, because I apprehend, from sundry expressions used by His Excellency in the correspondence, Sir William himself regards the sudden disruption of relations with a young man, who has so long been a member of his family, and enjoyed his confidence for so many years, with feelings of personal regret, if not of pain, and because it appears to me that explanations offered by a third party, not suffering as Captain Jervis is, under feelings, which, from their intensity, are calculated to interfere, and have, in fact, interfered, with his better judgement, might be found sufficiently satisfactory as to remove many of the grounds on which His Excellency has found cause of such serious displeasure.

"In offering this suggestion on behalf of Captain Jervis who is suffering under the most agonising feelings which an officer and a gentleman has ever experienced, I feel sure His Excellency will appreciate the earnest desire which actuates me, to pave the way, if not for the restoration of Captain Jervis to the favor and confidence of His Excellency, at all events to the removal of those causes which have, in His Excellency's mind, created such grave suspicions against him.

"Captain Jervis now perceives with regret that, in his anxious desire to avoid, during the necessary absence of his Counsel, any admission or statement which might, in the critical position in which he had been placed, be held to be prejudicial to him, or become liable to misapprehension, he has given just cause for the damaging imputation that he wished to avoid all explanation whatever.

"He is fully conscious of the Military offence which he unfortunately committed in absenting himself from the Court at which he had been ordered to attend, an offence for which he is ready and anxious to submit a full and sincere apology in any form His Excellency may direct, and he is now prepared to submit a full explanation of every point on which his conduct has been called into question, and, at the same time, to answer any questions and furnish any information that may be required of him.

"With this view I should be thankful if I could be favored with a copy of the Proceedings of the late Court of Inquiry.

"In conclusion, I would wish to state that Captain Jervis would be much gratified if he might be allowed to make up the accounts called for from him, at his own residence, instead of in the presence of the Committee, and for this purpose be permitted the use of the Books necessary to enable him to do so. The accounts all refer to His Excellency's private expenditure, and do not include any items of public disbursement, and Captain Jervis respectfully and earnestly submits for His Excellency's consideration, whether, in the absence of any prima facie ground, to pre-suppose inaccuracy, he might not be spared the humiliation, which is implied by compelling him to prepare his own acconnts, under the surveillance of a Military Committee."

A letter from myself to W. Tayler, Esq., dated 21st May.

SIMLA, 21*st May* 1866.

"MY DEAR MR. TAYLER.—The Commander-in-Chief is at Mahassoo; the request contained in your letter, just received, regarding Captain Jervis, shall be submitted to His Excellency at once.

(Sd.) FRED. FROOD."

A letter myself to W. Tayler, Esq., dated 21st May.

From Major F. FLOOD, Military Secretary, to W. TAYLER, Esq., dated Yates Place, Simla, the 21st May 1866.

"SIR,—In reply to your letter of this day's date, I am directed to say that the Commander-in-Chief will, of course, be very glad to receive your visit, and will be at home at his place at Mahassoo to-morrow. He begs, however, that you will understand that Captain Jervis is now under arrest for conduct affecting his character as an Officer and a Gentleman, for which he is liable to be tried; and further, that the Commander-in-Chief has reserved to himself the right of proceeding against him on criminal charges if he is not satisfied with the result of the audit now being carried on by my Committee.

"I must inform you that that Committee, having been assembled under Military Orders, for the purpose of enabling Captain Jervis to relieve himself of the imputations under which he labours, cannot be adjourned with regard to the terms under which Captain Jervis was placed in arrest. Further, any account prepared by that Officer must be searchingly audited according to its vouchers, before it can be accepted. Consequently, as we wish, under the Commander-in-Chief's orders to give Captain Jervis every possible assistance, it would save an infinity of time, and possibly great danger to himself, if he would come, with all his books and vouchers, in compliance with the orders given by His Excellency, and then assist the Committee to make up a sheet, instead of preparing one alone, which, as aforesaid, must be questioned in every item.

"Having said thus much, I am to inform you, on His Excellency's part, that your visit to him must be held to be one of a private character from one gentleman to another, which cannot be made use of in any way except with the entire consent of both parties. It must further be understood, that you do not come as being delegated by Captain Jervis, it being quite impossible for His Excellency to receive any communication from that Officer, except through the Courts, whatever they may be, which are ordered to enquire into his conduct. You will understand, that this in no way expresses condemnation of Captain Jervis, but that it is a simple matter of business, that, when an Officer has behaved with great contumacy, amounting to disobedience of orders, and further stands accused of offences involving his character as an Officer and a Gentleman, he having been placed under arrest for the same, it would be contrary to Military practice to receive messages from him, except through a Military channel, as it would also be improper for the Commander-in-Chief, in any manner, to anticipate the award of a Committee of Inquiry or a Court Martial."

A letter from W. Tayler, Esq., to myself, dated 22nd May :—

"*Simla, 22nd May*, 1866.

"SIR,—I have the honor to acknowledge the receipt of your letter of yesterday's date.

"I beg you will return my best thanks to His Excellency for his courteous reply to my suggestion regarding a personal interview, but, under the restrictions laid down by His Excellency, I fear I should only be causing him unnecessary trouble by availing myself of the permission.

"With regard to Captain Jervis' attendance at the Committee, for the purpose of assisting in the auditing of Sir W. Mansfield's private accounts, Captain Jervis, for the reasons stated at length in a memorandum which will be submitted in the course of to-morrow, does not feel himself justified, at all events, until those reasons have been considered by His Excellency, in taking a step which would involve an admission, which he cannot conscientiously make, that the discharge of the duties alloted to him by His Excellency, in the management of his private household, form any part of his Military duty, as an Officer in Her Majesty's service, or in any way subjects him to liability in his Military capacity, until, at least, some misfeasance is proved against him in a Civil Court.

"Captain Jervis wishes to take this opportunity, however, of submitting a humble and sincere apology, for having, under feelings which it is difficult to describe, but with which he believes His Excellency will sympathize, committed a breach of Military discipline in absenting himself from the Court of Enquiry.

"He throws himself, in this matter, on the indulgence of His Excellency, and humbly trusts that, in consideration of the sudden shock which was occasioned by the dishonouring and unexpected charges brought against him, without previous notice, and he submits, without any evidence whatever, this hasty act, which he now sincerely regrets, may be graciously condoned."

A letter from myself to Prisoner, dated 22nd May :—

"*Simla, 22nd May*, 1866.

"MY DEAR JERVIS,—The Commander-in-Chief having directed that you are to furnish your accounts to my Committee, forbids any further delay taking place; I am, therefore, to request that you will have the goodness to come to my quarters to-day at 11 o'clock for that purpose.

(Signed) FRED. FLOOD."

Copy of a letter from Prisoner, to myself dated 22nd May :—

"SIMLA, 22*nd May*, 1866.

"DEAR FLOOD,—All Sir William's accounts I could prepare, I have given him. If His Excellency will give me the Books asked for, I shall be obliged to him, as I can then complete the rest. My Counsel is in communication with Sir William Mansfield; pending His Excellency's decision on this communication, I do not desire to attend your Military Committee for the purpose of laying before it Sir William Mansfield's private accounts.

Very truly yours,

(Signed.) SCOTT JERVIS."

A Memo. from Prisoner to myself, forwarded 23rd May :—

MEMO:

"The reasons which induced Captain Jervis to decline (at least, until the whole question is re-considered by His Excellency) attending the Committee now sitting to audit Sir William Mansfield's private accounts, necessarily embrace the whole circumstances of the case."

"A brief summary of the facts is therefore herewith submitted."

"The charges first brought against Captain Jervis, as contained in the Minute of His Excellency Sir W. Mansfield, were based upon the evidence of a domestic servant; that evidence was taken in the absence, and without the knowledge of Captain Jervis, and contains, in itself such remarkable inconsistencies as in reality to prove nothing.

"His Excellency's Minute of the 1st May 1866, presented two alternatives viz.

" If Captain Jervis admits the truth of the Butler's allegations there is nothing more to be done; if, on the other hand he does not admit the truth of them, he will appear before a Court of Enquiry consisting of Major Flood and Major Gordon, and shake the evidence against him as well as he can.'

" In a subsequent Minute, His Excellency records:

" Under these circumstances, His Excellency has no hesitation in saying that Captain Jervis must cease to be on his Staff forthwith.'

" Now, although Captain Jervis had not by any means admitted the facts stated by the witness Abbey in the sense of acknowledging any culpability whatever on his own part, but had only admitted by implication bare facts, which involved culpability or otherwise, according to the concomitant circumstances, and the sense in which they were interpreted; yet as His Excellency based his apparently final decision on this so-called admission, and acted upon it by summarily dismissing Captain Jervis from his Staff, Captain Jervis did not suppose, and could not suppose, that he was entitled to, or could demand, a Court of Enquiry after such decision had been passed, especially as His Excellency had distinctly stated that " nothing more was to be done."

" This is referred to, because the fact of Captain Jervis, not having applied for a Court of Enquiry, has been considered as a fact damaging to his character.

" A Court of Enquiry was, however, summoned some days after the Minutes cited above, in which His Excellency had passed his final decision in the case.

" At this Enquiry Captain Jervis attended; but declined, as he believed himself entitled, to say anything in the absence of his Counsel, and submitted a request that the Enquiry might be postponed for a few days, until his return.

" Captain Jervis' reason for thus declining was simply a matter of prudence, arising from the peculiar circumstances of the case.

" His Excellency had refused in the first instance to see or hear him. He had been condemned unheard, on ex-parte evidence of a single witness, His Excellency's personal servant. A letter, emphatically denying all culpability, had been interpreted by His Excellency as an admission of charges, which Captain Jervis, in fact, in that very letter, indignantly repudiated. No opportunity of explanation had been afforded him, though it had been offered. He himself was, as he still is, under the conviction that the whole question was of a private character, not connected with his Military duties, or Military liability, and he therefore felt that any incautious admission by him, especially when laboring under the indignant feelings which his treatment had created, might be hereafter used to his prejudice.

" On this account it was, that he declined to speak, preferring to leave the enquiry to take its course, until he was advised whether his position on all the above points, was a sound one.

" He is now called upon to attend a Military Committee, appointed by Sir William Mansfield, to audit His Excellency's private accounts, and he is warned that anything he says, during this operation, will be used hereafter against him.

" These accounts are accounts of Sir William Mansfield's private expenditure. They have been kept by Captain Jervis, at the cost of great labor and trouble, in the absence of a paid accountant. They exhibit a considerable balance due to Captain Jervis, and Captain Jervis is willing and anxious to close and present them, if the means are afforded him of so doing.

" But he respectfully protests against the indignity and the cruelty of compelling him to perform this private duty in the presence and under the surveillance of a Military Committee, thereby admitting, what he cannot conscientiously do, that the duty is a Military duty, or that there is the slightest occasion for such surveillance or the insult which it conveys.

" Captain Jervis feels assured, that His Excellency himself would view with approbation his wish to maintain, by legitimate means, his just rights as a gentleman and officer, and Captain Jervis, therefore, respectfully solicits His Excellency's carefully consideration of this statement, and hopes that His Excellency will not further insist upon his undergoing the painful ordeal, but allow him to prepare and present his accounts, as he has hitherto done. An explanation, in regard to the charges first brought against Captain Jervis, will be submitted in the course of to-morrow.

"Any other matters that require explanation, will also be fully explained on intimation being received of their character and purport.—(signed) SCOTT JERVIS, Captain, 106th Light Infantry.

Copy of a letter from Prisoner to myself, dated 23rd May:—

23rd May, 1866.

"DEAR FLOOD.—I am sorry to be obliged to trouble Sir William with another application for a cheque for the balance of the building account due to me; I must request that you will explain to his Excellency, that my expenses are very heavy for Counsel, &c., in carrying on the unfortunate business about which we are corresponding at present. I cannot wait any longer for the money, and I must ask you to explain to Sir William, that if it is not convenient to him to pay the whole, I desire to have a cheque for Rs. (1,000) one thousand: about the half of this sum I want to pay away at once.—(Signed) SCOTT JERVIS."

Copy of letter from myself to prisoner, dated 23rd May:—

"From Major F. FLOOD, Military Secretary, to Captain E. S. JERVIS, 106th Foot, dated Simla, the 23rd May 1866.

"Sir,—I have the honor to acknowledge the receipt of your private letter of this date, asking for money from the Commander-in-Chief, and to inform you that there is no reply to it but the one you have already, on two occasions, received.

"I take this opportunity of informing you, that on receipt of your second note yesterday, the Committee, of which I am the President, adjourned, and reported to the Adjutant-General, that you had failed to comply with the instructions I had conveyed to you, to attend the Committee, which was sitting by the Commander-in-Chief's order, for the purpose of auditing His Excellency's private accounts."

Memo. placing Prisoner under arrest and ordering Committee of Audit:—

"*Memorandum by the Commander-in-Chief.*

"After seeing the Finding of the Court on the proceedings attributed to Captain Jervis, first in the direct charges which were preferred, and secondly in the still graver matter adduced on the 14th of May 1866, no choice is left to the Commander-in Chief.

"2. Captain Jervis has declined to afford any sufficient explanation with regard to the charges preferred in Court, and he has offered no defence against the matter alleged by Major Gordon this day (14th May 1866.)

"3. Captain Jervis is therefore placed in arrest on the matter of the first charges; secondly, with respect to the alleged breach of trust, as conduct unworthy of an officer and gentleman; and thirdly, for direct disobedience of Military orders conveyed to him by the Adjutant-General, to bring the Commander-in-Chief's Account Books, Papers, &c., to the Court of Enquiry, which sat on the 14th day of May 1866.

"4. His Excellency reserves to himself the right of preferring charges against Captain Jervis with regard to the criminality of this breach of trust, according to the sense of the Criminal Code, as His Excellency may be advised by the Judge Advocate-General; while every opportunity will be afforded him of removing that character from the breach of trust if possible,

"5. He now again receives the Military order of His Excellency to surrender all books, papers, letters, bills, and receipts, which purport to have regard to His Excellency's accounts.

"6. He, being under arrest, will daily attend at the Military Secretary's Office, for the purpose of assisting the Military Secretary, Major Gordon, and an officer to be named by the Adjutant-General from his department, in unravelling the accounts, and so make a real and honorable attempt to relieve himself, Captain Jervis, from the frightful imputations under which he now labours.

"7. Every opportunity will thus be afforded to him of righting himself if possible.

"8. The three Officers as above alluded to, will thus sit as a Committee, and will report, for the information of the Commander-in-Chief, as soon as possible.

(Signed) W. R. MANSFIELD, *General,*
Commander-in-Chief in India.

HEAD QUARTERS,
SIMLA, 14*th May*, 1866.

ADJUTANT GENERAL'S OFFICE,

SIMLA, 15*th May*, 1866.

"Forwarded to Captain Jervis, by order of His Excellency the Commander-in Chief.

H. E. LONGDON, *Colonel.*

Adjutant-General.

(The whole of the foregoing documents were then read in Court.)

Q.—Does not this correspondence show, that at the very time "I neglected to attend the Committee," I had respectfully and deferentially laid the whole question before His Excellency for consideration?

PROSECUTOR.—The letter of the 23rd May is widely apart from the matter before the Court, and the date is subsequent to that of the charges brought against the prisoner, and it has been read at request of the prisoner, when objected to by the Prosecution.

Question was recorded.

A.—It appears to me from this correspondence that the prisoner's application was subsequent to his non-attendance at my Committee.

Q.—Did not Mr. Tayler's letter of the 22nd state that an explanation would be sent the next day?

A.—Yes.

Q.—As you had several times postponed your sitting, and for far less important reasons, what prevented your postponing it again, when I told you I had referred the matter to His Excellency?

A.—It was His Excellency's order that no further delay should take place; I communicated that order to the prisoner.

Q.—Was that order given in ignorance of the remonstrances made, both by Mr. Tayler and myself, or after reading the remonstrances?

A.—It was after receipt of Mr. Tayler's first letter of 21st May.

Q.—Kindly answer the last question distinctly.

A.—I have no further answer to make; I submit to the Court, that I have answered it very distinctly.

PRISONER.—I submit to the Court, that it is no answer to the question.

Q.—Did you not consider it would have been fair, both to His Excellency and myself, to have postponed the sitting for half-an-hour, till you could ascertain the pleasure of His Excellency, with reference to two such formal and earnest remonstrance as had been made?

A.—I beg to submit that I am here to state facts, and not opinions.

Q.—I asked you, as a fact, whether you did not at the time so consider--not what your opinion is now?

A.--I did adjourn the Committee on the 21st May after receiving Mr. Tayler's letter, which will be seen in the correspondence just read. On the 22nd, I communicated the Commander-in-Chief's orders, that no further delay should take place.

Q.—Did I ever attend the Committee of Audit, and on what occasion, and what took place, when I so attended?

A.—The prisoner attended the Committee on the 16th May, I believe; and handed in an account with reference to some building that he had charge of; Committee received the account, and told prisoner that he need not attend, unless he wished it, as a Committee would go through it at their leisure.

Q.—You stated yesterday that none of the Books you identified had been made over to the Committee of Audit, will you read this note from Colonel Stewart, and say what Book it refers to and what is the meaning of it!

Here a letter addressed by Colonel Stewart to Captain Jervis was read: it was as follows:

SIMLA, 15*th May* 1866.

"MY DEAR JERVIS,—The book has passed out of my hands, and is now with His Excellency. But I have transferred your note to Flood, and have told him, that there can be no

objection to your getting the account you require; and I hope he will send it to you as soon as possible, if the Commander-in-Chief has no objection.

Yours faithfully,

(Signed) D. M. STEWART."

A.—I cannot say what Book he refers to, it was not in my possession. No Book was handed to me by Colonel Stewart.

Q.—Was this note transferred to you?—I mean the note asking for a Book.

A.—I think I have seen the letter, but I really cannot say whether it was transferred to me or not, very likely it was.

Q.—If it was transferred to you, why was it, and what did you do?

A.—I really cannot say. Being made the general channel of communication by the Commander-in-Chief, it is quite impossible for me to recollect every demi official note that passes through my hands.

Q.—I twice asked you a plain question on Saturday, viz., whether any explanation had been called for in the matter of the accounts before the Committee of Audit was convened?

A.—The accounts were not furnished, therefore no explanation regarding them was asked for.

Q.—You referred on Saturday to the Hotel Bills, last year, at Umballa; can you state exactly how these Bills were prepared?

A.—No, I cannot.

Q.—At that time, you say, you had communicated to Captain Christie, that none of the Personal Staff's charges were to be included in His Excellency's Bills?

A.—I must refer to my answer of Saturday.

PRISONER.—This Umballa Hotel Bill is the bill regarding which the prisoner stated Captain Christie had consulted him at the time it was incurred at Umballa.

Q.—Will you look at this Bill and say what it is?

A.—It is a Bill of the Umballa Hotel, made out in the name of Captain Christie for the accommodation of His Excellency, self, and Captain Harbord.

Bill here read out, dated April 1865—amount Rs. 228-14-0.

(Signed) Received payment. F. LUMLEY.

Q.—Is this the system you described, and under which you stated that the accounts were never mixed up when His Excellency was travelling with his Staff?

A.—I was not aware of that Bill; I am not answerable for it; I never saw it before.

Q.—How and by whom, was this Bill paid;

A.—I really do not know.

The Court here desired that the Books should be numbered for reference.

Q.—Will you look at this Book, (page marked) and say how the expenditure is entered?

The Deputy Judge-Advocate wished to alter the wording of the question, and call the Cash Account a Ledger.

PRISONER.—I submit my question should be put in my own words. The Judge Advocate has Court substituted his own designation of the book, calling a Cash Account a Ledger.

Directed that the question shall be put in the words of the Prisoner.

THE SAME QUESTION.—Will you look at this Book, (page marked) and say how that expenditure is entered?

A.—It is entered simply as Hotel Bill, Umballa; full amount, Rs. 228-14-0. On opposite side, I observe Captain Harbord's share of Hotel Bill, Rs. 20; also Captain Christie's Rs. 60, is credited to Sir William Mansfield. The Book referred to, is called by prisoner a Cash Account; I have termed it a Ledger.

Q.—If the charges of the Personal Staff were included in His Excellency's Bill, and paid in his accounts out of his money, as now appears by this Bill, how could you on your oath say that such things never did occur?

A.—I am not aware that I did say that travelling expenses were never mixed up. But the mere fact of this Umballa Hotel Bill being charged in a lump to the Commander-in-Chief, and Captains Christie and Harbord's shares being credited to His Excellency, does not show a mixing up of accounts. I object to being reminded that I am on my oath.

Q.—Have you ever repaid the item that appears against your name in that Bill?

A.—No item, that I am aware of, appears in that Bill against my name.

PRISONER.—I can point it out—Note Coolies, 25th, to Captain Floo and others, six annas debit.

WITNESS.—I submit that this is an item against the Commander-in-Chief for carrying notes to me from the Commander-in-Chief. That item is explained further, as I was not living in the Hotel with the Commander-in-Chief.

Q.—When, on Saturday, you read out in detail all the "recoveries," with the view of proving that such recoveries were very rare, how came you to omit such important items as these?

DEPUTY JUDGE ADVOCATE.—I may say to the Court, that on that occasion, this Book was not shown to the witness; the question then was upon the Ledger handed to him.

A.—That Book was not in my hand at the time I made that reply; I think the Book in my hands then referred to Sir William Mansfield's accounts in the Bombay Presidency, and with this remak I think I concluded my answer.

Q.—Looking at this Book, will you now state what interval occurred between the payment of the Hotel Bill and the recoveries from the personal Staff of their shares?

A.—The Hotel Bill apparently was paid on the 12th April; there is no date opposite that item. There is no date opposite any of the items credited to the commander-in-chief; the heading is April, and the credits are in that month.

Q.—Was the custom to allow individuals to have their horses shod by His Excellency's farrier, and afterwards recovering the value, only carried out on the "line of march," or at other times?

A.—As far as I recollect, only on the line of march and not beyond the Personal Staff.

Q.—You have stated that I allowed my travelling expenses to be charged to His Excellency, when travelling with the Butler Abbey; have you seen the Bill, and can you produce it?

A.—I have stated nothing of the sort.

Q.—When, as you have stated, you kept up all your Books, up to date, what assistance had you?

A.—I had the assistance of a clerk.

Q.—You have stated that all accounts were brought up to date, and each month's accounts closed immediately after the end of the preceding month; can you explain, if this were the case, why such delay occurred in receiving the value of the mutton sold by His Excellency?

A.—Because, I presume, the accounts were not rendered to the officers in question; I can state from my own knowledge that immediately they were rendered, they were paid, during my incumbency.

Q.—You have stated that I never told you I had borrowed any stores or horse-gear; will you say whether I was under any obligation to mention such things to you?

A.—No.

Cross-examination closed.

Re-examination by Prosecutor.

Q.—Did you receive a positive order not to delay proceedings, and did this absolutely preclude any application from prisoner for postponement whatever that may have been?

A.—Yes.

PRISONER.—I would submit that is merely a matter of opinion.

Q.—You stated that prisoner came on the 13th to the Committee, did you tell him that he was not required to bring other than the Building Account?

A.—I said that if his attendance was required, we would ask him to come down to my quarters again.

Q.—You have stated that the object was to audit the general accounts of the Commander-in-Chief, why did you not do so?

A.—Because they were not furnished to the Committee by the prisoner.

Q.—Did the Committee intimate to him that they were ready to enter upon this examination?

A.—Yes.

Re-examination by Prosecutor closed.

Examination by the Deputy Judge Advocate Genenal.

Q.—If the examination of the general accounts, had been proceeded with, would the matter of alleged misappropriation of stores, &c., and the Khansamah's accounts, have come before it?

PRISONER.—I respectfully request that I may be informed under what Law the Deputy Judge Advocate puts a question?

DEPUTY JUDGE ADVOCATE.—It is in accordance with the practice of Courts Martial in India, and according to my experience of ten years in the Department.

PRISONER.—I beg to submit that it is utterly illegal.

Court closed Court allowed the question.

A.—The orders of the ourt were that they should exercise a searching audit of all Sir William Mansfield's accounts, so that if acts of misappopriation had come to their knowledge during the audit of the accounts, they would of course have been noticed.

Examination by Court.

Q.—You have stated that prisoner took over the accounts from Captain Christie on the 1st September 1865; can you state whether any certificates of receiving or taking ever passed between them, as is the case in Regiment Mess accounts?

A.—No, I am not aware; I should think no such certificates passed.

PRISONER.—May I ask to see the authority produced by the Deputy Judge Advocate, for putting the question to the witness, objected to by me.

DEPUTY JUDGE ADVOCATE.—A circular by the head of my department.

PRISONER submits that he would desire higher authority than the head of the Deputy Judge Advocate's department, viz., the authority of law.

Q.—You have stated in one of your replies that the Committee had nothing to do with the stores, &c.; will you explain what you mean!

A.—I have not had the charges read over to me.

COURT here proposed to read the charges to witness.

PRISONER.—I submit that there is no occasion to read the charges to a witness.

The witness is here to state facts which have come within his own knowledge, and nothing more. It would be quite out of order to read charges to a witness to enable him (the witness) to give the exact description of reply to the Prosecutor or Deputy Judge Advocate, acting, as I imagine, illegally for the Prosecution, may desire to elicit from the witness.

Court adjourned, at 4 P. M. till 11 A. M. on Tuesday 10th July, 1866

XIth DAY'S PROCEEDINGS.

Court re-assembled at 11 A.M., *on Tuesday,* 10*th July* 1866.

Examination by the Court, of Major FLOOD,—(*continued.*)

Q.—In continuation of the last question, state whether as President of the Committee of Audit, you had instructions to investigate the question of misappropriation of stores?

A.—Perhaps, when I said that the Committee of Audit had nothing to do with the case of misappropriation of stores, it would have been more correct to say, that they received no distinct instructions regarding that point, but as I have said, in a previous answer, if such facts had to come to their knowledge, they would have taken notice of them.

PRISONER.—I wish to object to that part of the proceedings of yesterday, in which the Deputy Judge Advocate was allowed to take part in the prosecution, and put questions to a witness.

I submit the following remarks on the question mooted at close of yesterday's sitting, for the serious consideration of the Court. The power to examine witnesses is a power specially conferred by law, and cannot be exercised by any individual in the world, except by those upon whom it is thus conferred. The persons empowered by law to examine witneses are, 1*st* the Prosecutor, 2*nd* the Prisoner, 3*rd* the Court. This is so clearly and incontrovertibly laid down, that for any other party to arrogate to himself this specific privilege is, I submit, altogether unjustifiable. No mere dictum of a Judge Advocate-General can over-ride the law; and thus the authority, yesterday produced by the Deputy Judge Advocate-General, is no authority at all. But it is not only that the unauthorised assumption of this power *is illegal,* but it is also clearly opposed to the essential character of the Deputy Judge Advocate-General's functions, as laid down in all the standard works of Military Law.

Without troubling the Court with any detailed exposition of this part of the subject, on which the Court itself is doubtless well informed, I will merely quote the direction so emphatically recorded by D'Aguilar on the Courts Martial—a work which I need hardly remind the Court if officially declared to be the authority on all such questions. This work lays it down as a positive rule, that the Deputy Judge Advocate-General *should maintain an entirely impartial position* and again that *he should take no part in the* conduct of the prosecution. I need hardly say that the rule in the same memorandum that "the opinion of the Deputy Judge Advocate ought to be conclusive upon any point of law or procedure which arises," can only refer to points *not clearly laid down*; not to points on which the law, and the rule are clear, specific, and beyond question. In the present case, the answer on oath of the witness (His Excellency's Military Secretary) had entirely destroyed one of the principle charges brought against me, inasmuch as he had distinctly and unequivocally declared, that the Committee of Audit" had nothing to do with the very matters for the investigation of which the charge declares the Committee has assembled. Was it maintaining an entirely impartial position for the Deputy Judge Advocate to come forward at all at such a crisis, and endeavour, by a leading question, to patch-up this wound in the Prosecutor's case? Was it not directly "taking part in the prosecution" in direct violation of the rules laid down for his guidance, thus to thrust himself forward in support of the prosecution? I submit this question as one of the most important that can arise for the Court's decision, not only as regards the particular instance now under discussion, but with reference to the whole conduct and procedure of the Deputy Judge Advocate, past, present, and future. I submit, for the Court's grave consideration, whether the Deputy Judge Advocate has not, from the first "taken," more or less, "a part in the prosecution" against me; and I respectfully appeal to the President and Court, to afford me sufficient protection from such illegal pressure, by issuing a stringent prohibition against any such procedure in future. Should the Court consider the view which I have submitted to be correct, I would hope that the questions put by the Deputy Judge Advocate-General may be expunged from the proceedings.

DEPUTY JUDGE ADVOCATE REPLY.—"I have already stated to the Court what has been the practice of Judge Advocates at General Courts Martial for many years: when the position of Judge Advocate was directly referred to in the Articles of War, the question was referred by the Judge-Advocate-General of this Army (in August 1865) to the Right

Honorable the Judge-Advocate General at home, as to the duties of Judge Advocates, and it was directly stated that it was the duty of the Judge Advocate to put such questions as may be necesssary to elucidate the matters before the Court. I deny that I have taken any other than an impartial position. I had at the first to give opinions on the prisoner's pleas and to give perhaps other opinnons which the prisoner may consider contrary to his interests: this was done in the discharge of my duty.

Captain The Hon'ble Walter Harbord, A.D.C., sworn and examined.

Q.—How long have you been on His Excellency's Staff?

A.—One year and two or three months.

Q.—Between what dates was Captain Jervis at Mahassoo last autumn?

A.—From September until he left Simla in November.

Q.—Was he living in his own residence, or that of the Commander-in-Chief?

A.—In his own.

Q.—Did you know the date of the last entertainment at Barnes Court, last year?

A.—I do not know the exact date, but it was in September.

Q.—Did prisoner entertain at Mahassoo, did you join in the expenses, and did any other member of His Excellency's Staff join in them?

A.—Prisoner did entertain at Mahassoo. On two occasions I joined in the expenses of the entertainments with the prisoner. No other member of His Excellency's Staff joined in them to my knowledge.

Q.—Have you paid your share of the entertainments?

A.—Yes.

Q.—Will you state in what manner you made the payments?

A.—I left a cheque at Simla with prisoner, for the pu rpose of paying a "Bunneah's" Bill, as the Bunneah was not satisfied with the amount, the prisoner cashed the cheque and appropriated the money, in payment of my Mahassoo expenses.

Q.—When did you leave Simla?

A.—On the 15th October.

Q.—How do you know the cheque was made use of in the manner stated?

A.—Prisoner wrote to me, to say so, from Simla. I have not the letter, I tore it up. The letter I received at Meerut, stating that he had appropriated the money as described.

Q.—Are you in possession of the cheque, and can you produce it?

A.—Yes this is it.

(Cheque was here produced, and identified as Captain Harbord's, dated October, for Rs. 220, on Simla Bank.)

Q.—After receiving that letter from prisoner, did you consider that your liability on account of the Mahassoo entertainments had ceased?

A.—Yes.

Q.—Since that time, has the prisoner made a demand on you on account of these entertainments?

A.—No.

Q.—Has the prisoner ever re-paid, or offered to re-pay, you the Rs. 220 which you stated the Bunneah would not take from him on your account?

A.—No.

Q.—When you joined in the entertainments, did you know where the prisoner obtained the stores from?

A.—I know that the prisoner gave orders to the Commander-in-Chief's Khansama to supply stores and eatables.

Q.—Do you know where the wines came from?

A.—No, I do not.

Q.—Do you know how many entertainments the prisoner gave last year, and the extent of them?

A.—I do not know the number, they extended over the period that he was residing at Mahassoo.

PROSECUTOR.—I mean how many people were invited?

A.—Several people, on different occasions.

Q.—How many people were there, on the two occasions, when you joined?

A.—Twelve or fourteen people on each occasion.

Q.—When Captain Christie had charge of the household, did he give a pic-nic, and who joined in it?

A.—Yes; Captain Christie, the prisoner, and myself joined in it.

Q.—Who provided the tiffin.

A.—The Commander-in-Chief's Khansama.

Q.—Do you know if he was paid?

A.—I know he was paid, I could not state the date, except that he was paid immediately after the pic-nic took place.

Q.—When not in attendance on the Commander-in-Chief, have the expenses of your table ever been paid by the Commander-in-Chief?

A.—No.

Q.—Have you ever received from the prisoner any articles of horse-clothing or stable-gear, which had been ordered in the name of the Commander-in-Chief?

A.—No.

Q.—Has the prisoner ever mentioned to you that he had taken for his own use, any articles so ordered?

A.—No.

Q.—Do you know from what tradesmen in Calcutta the Commander-inChief's horses were supplied with clothing last winter?

A.—Yes, Monteath's.

Q.—Do you know if Captain Jervis dealt with Monteath, during last cold weather, on his own account?

A.—Yes, I do know, he had boots made there.

Q.—Can you state when this fact came to your knowledge?

A.—During our stay at Calcutta, about the month of December or January.

Q.—Since you have been on His Excellency's Staff, have you ever travelled in attendance on him?

A.—Yes.

Q.—State when?

A.—When I left Simla last year on the 15th October, I went to Meerut to meet the Commander-in-Chief there.

Q.—Have you ever preferred a request, that your expenses, either on this or any other occasion, should be paid by His Eexcelleucy?

A.—No, never.

Q.—When travelling with the Commander-in-Chief, are your Hotel expenses paid, and on how many occasions have you travelled with His Excellency?

A.—To a certain extent the Hotel Bills have been paid, that is, we never paid for our dinners when dining with His Excellency; but other charges were defrayed by ourselves. On several occasions I have travelled with His Excellency, but cannot say the number of occasions.

Q.—When you joined His Excellency's Staff at Umballa in April 1865, was this principle observed?

A.—Yes.

Q.—Have you seen this Bill before, and who paid it?

A.—Yes, I paid it myself.

Q.—Under what circumstances?

A.—Captain Christie being sent on to Simla, handed over to me a sum of money to pay the Commander-in-Chief's expenses.

Q.—How and when did you account to Captain Christie for this money?

A.—On my arrival at Simla, I handed over to Captain Christie an account, and asked him to what extent we had to pay, in the Bill presented by me; he said he thought it had better be referred to Major Flood, which was done.

Q.—Did you pay any share of the Bill, and when?

A.—Yes, immediately on arrival at Simla.

Q.—When travelling with the Commander-in-Chief, does His Excellency defray any incidental road expenses, which are not paid by Government?

A.—No.

Q.—Has the prisoner ever mentioned to you, that in travelling up to Simla last March, he had charged his travelling expenses to the Commander-in-Chief?

A.—No.

Prosecutor's examination closed.

Cross-examination by Prisoner.

Q.—Were you ever dismissed from a Masonic Lodge?

Was your name withdrawn, when proposed, as a Member of the Bengal Club, because it was known you would be black-ball'd?

Were you last year publicly assaulted at the Simla Club?

PRISONER.—"I respectfully beg these question may be put. The general character of the witnesses who give evidence against me, is one of the points in my defence, and the law distinctly allows me to put such questions."

Court closed.

DEPUTY JUDGE ADVOCATE.—The Prisoner has a right to put questions affecting a witness's character and thereby his credibility. It is stated in Tayler on Evidence, Vol. II. page 1137, as quoted in Goodeve on Evidence page 247. "So, questions respecting alleged improprieties of conduct which furnish no real grounds for assuming, that a witness who could be guilty of them, would not be a man of veracity, might very fairly be checked." I therefore submit that the Court should consider in their own minds, whether admission by witness of what is alluded to in the several questions, would affect the opinion of the witness's credibility.

Court decide to disallow questions 2 and 3, and to re-consider question No. 1.

Court then adjourned for half an hour:

on the Court re-opening.

WITNESS.—Mr. President, I beg I may be allowed to answer the several questions put by the prisoner, as they have been recorded, for the purpose of enabling me to remove the suspicions affecting my character.

Court directs them to be put.

Q.—Were you ever dismissed from a Masonic Lodge?

A.—I have heard I was dismissed from a Masonic Lodge; I may add that I never divulged the secret or sign which I believed alone was the object of the secrecy, and to which I imagined I was bound. But I believe the fault I committed was, in speaking lightly of the order, and acknowledging the preliminaries of the ceremony were correct, as stated in a Book on Masonry, by Carlisle. I may have transgressed the rules of the order, but if I had seriously committed myself, the first tribunal I should have expected to have been brought before, would have been my brother officers; as they, however, never even desired an explanation of the matter, I imagine my character with them remained intact. I may add that Colonel Faddy was here at the time, and I believe the Master of the Lodge at that time, and he can state his ideas on the case, which were that I was expelled for speaking lightly of the order. This happened in 1859.

Q.—Was your name withdrawn, when proposed, as a Member of the Bengal Club, because it was know you would be black-ball'd.

A.—I believe my name was withdrawn; but not for any personal dislike to myself; there was a hostility shown towards officers who were put up at that time; there having been a quarrel between the lawyers and Military in the Club, at the time my name was put up.

Q.—Were you last year publicly assaulted at the Simla Club?

A.—No, I was not.

Q.—Was my name not put up at the same time and by the same people, and was I not elected?

A.—I don't know.

Q.—Was any arrangement or understanding entered into between me and you, as to shareing expenses, and, if so, what was it?

A.—Yes, we agreed to share the expenses of this picnic party, and of an entertainment which lasted two days, to which I invited, myself, certainly three people out of the party; I can name them.

Q.—How was the order given to the Khansama to supply the stores?

A.—By Captain Jervis to the Khansama.

Q.—Did His Excellency the Commander-in-Chief ever attend these parties as a guest, and what other people came also?

A.—The Commander-in-Chief did come as a guest, I believe; I can also mention about 30 people who went to Mahassoo.

Q.—Did you know that the stores belonged to His Excellency?

A.—I could not swear to it, as I did not see them go out of the store-room.

Q.—Should you have had any scruples about eating or drinking any of the stores at the Mahassoo parties if you had known they belonged to the Commander-in-Chief?

A.—I do not know about the stores, because they could have been re-placed at any time; but as regards the wines, I should certainly not have partaken of them, or I should have asked the prisoner a question about them, as he knew the custom of the house, and I was not supposed to know anything about them. I may add, to show my scruples on the subject, I brought up, from Calcutta, my own wine, having no idea that I could get any from the Commander-in-Chief.

Q.—Do you now know that the stores belonged to the Commander-in-Chief, and if so, when did you obtain this knowledge?

A.—I have no knowledge on the subject; I can only state my impression, that they belonged to the Commander-in-Chief.

Q.—Do you now know that the wine belonged to the Commander-in-Chief, and how have you obtained the knowledge?

A.—I do know that it belonged to the Commander-in-Chief.

Q.—If stores could have been re-placed, why could not wine also be re-placed or paid for?

A.—Because people's tastes differ; the Commander-in-Chief might not have approved of wines which had been replaced in return for wines that had left his cellars.

Q.—Would the scruples, that you say you would have felt in drinking the wine, and not in eating the stores, have had reference to any moral obligation, or merely because the former could not be so easily re-placed as the latter?

A.—I should certainly have thought it excessively wrong to take wines from the Commander-in-Chief's cellars, without having previously asked his permission to do so.

Q.—What I wish to ask is whether there would have been any moral wrong in drinking wine, but none in eating oilman's stores?

A.—I know nothing of the customs of the establishment, and should only have acted as my impression as a gentleman would have induced me to act, and I should not have thought it gentleman-like to take wines.

Q.—Do you know where the Commander-in-Chief's wine was bought, I mean the wine you say was used at the pic-nic parties?

A.—I do not say the Commander-in-Chief's wines were used at the pic-nic parties, and have not said so.

Q.—How do you know that I gave the order to the Khansama to supply the stores?

A.—I heard the prisoner give the order myself.

Q.—Why did you give me the cheque to pay the Bunneah, as you have stated?

A.—Because I left Simla in a hurry and had no time to settle with him myself.

Q.—Had you not, at the time you gave me the cheque you have produced, any accounts with me, and of what nature?

A.—I was very careless about my money affairs; I am not aware of having any account with the prisoner; at the most I may have received a few rupees from prisoner.

Q.—When you agreed to let the amount, paid by you, be credited to the Mahassoo expenditure, had you ascertained what your share was, and how?

A.—No, I asked prisoner, when we were at Barrackpore, to furnish me with an account; but he put it off from day to day, and has never done so yet.

Q.—Has the Bunneah been ever paid, and by whom?

A.—To the best of my belief he has not been paid, because he declined to accept the amount that I had offered him; but, within the last week, he has offered to take that amount.

(Witness here desired that he might be allowed to add to his answer regarding the Bengal (Club.)

Addition.—I would simply add, at the same time I was put up at the Bengal Club (or within a few days) I was elected a Member of the Calcutta United Service Club, after withdrawing my name from the Bengal Club.

The Court adjourned till 11 A. M., Thursday the 12th July.

XIIth DAY'S PROCEEDINGS.

Court re-assembled at 11 A.M., *on Thursday,* 12*th July* 1866.

Cross-examination of Captain The Hon'ble W. Harbord,—(*continued.*)

Q.—You heard me give the Khansamah the order for the stores, and were under the impression that they belonged to His Excellency. Did it ever strike you, that you were, in eating them, acting as an accomplice in misappropriation with a view to defraud the Commander-in-Chief?

A.—I had nothing to do with the management of the establishment, and I had no idea at the time that prisoner could do anything wrong, and left it entirely in his hands?

PRISONER.—I beg to submit that is no answer to my question.

COURT.—Read the question again.

A.—I never thought anything about it.

Q.—Have you ever been accused of being such an accomplice?

A.—No.

Q.—If I was guilty of misappropriation, how is it that you are not guilty as an accomplice?

A.—As I had nothing to do with the management of the establishment, having left it entirely in the prisoner's hands, I do not consider myself guilty as an accomplice.

Q.—Did you recognise the taste of the wines as those you had been in the habit of drinking at His Excellency's table?

A.—I don't remember anything about it.

Q.—What was the exact order, as far as you can remember, that I gave to the Khansamah about the stores?

A.—To supply eatables and stores for the entertainments.

Q.—Whose friends were principally invited to the Ladies' pic-nics; mine or yours and Captain Christie's?

A.—Principally my own friends; I know of none of Captain Christie's friends being invited.

Q.—Have you ever bought provisions at Simla on your own account, and had the bill charged to Sir William Mansfield?

A.—No.

Q.—Did you receive any assistance from the Prosecutor while under examination on Tuesday last?

A.—No.

PROSECUTOR.—Submits that he may be permitted to explain the circumstance referred to.

PRISONER.—I beg that my next question may first be put.

Q.—What was the paper passed to you by Prosecutor?

A.—It was sent to me by a person in Court, suggesting an addition to the answer I was making.

Q.—Who was the person?

A.—Mr. Kennedy.

PROSECUTOR.—At the commencement of the examination of Captain Harbord, three questions were submitted to the Court by the prisoner, which he desired to put to the witness. After consideration, two of these questions were disallowed by the Court; but Captain Harbord prayed to be permitted to reply to them all, as they had been recorded in the proceedings and contained allegations seriously affecting his character. With the permission of the Court he then proceeded to answer the question *seriatim*. The position of witness was a trying one. The refutation of the implied allegations must depend solely on the explanation before this Court; there were amongst those present, persons who were perfectly cognisant of the facts of the case; it appeared to them that Captain Harbord's reply to one of the questions, viz., that relating to the withdrawal of his name as a candidate for the Bengal Club, did not (doubtless owing to the trying position he was placed in) represent the circumstances of the case in their proper light. Two notes were consequently handed up to the witness for the purpose, I presume, of informing him of some omission, and

those I handed to him. It will be observed by the Court, that the question to which they referred had already been disallowed by them as irrelevant, therefore the answer of the witness could in no manner affect the case, but must be regarded as a voluntary explanation and quite independent of his evidence on the charges now being tried.

Under these circumstances, I respectfully submit that I should have considered myself to blame, if I had declined to place in the hands of the witness the papers forwarded to me.

If I have committed an irregularity, I beg to offer my most humble and sincere apologies, but I would beg to reiterate, that I have myself offered no assistance either to this or any other witness.

Court closed.

Court decide that it was an apparent irregularity, and was checked at the time; no damage had thereby been done to the prisoner's case, and the explanation by the Prosecutor was accepted as satisfactory.

Cross-examination closed.

Re-examination by Prosecutor.

Q.—You left Simla in October 1865; you have stated that you might have owed the prisoner a few rupees on a private a account, state if you made any payment to him beyond the payment of Rs. 220 already stated?

A.—Yes, I gave him a cheque for the sum of Rs. 80; it was ante-dated to 16th October, the 15th, the day I left, being a Sunday. I produce the cheque. If I had owed the prisoner more money, I conclude he would at that time have demanded it from me.

Re-examination closed.

ADDITION.—I understood Colonel Faddy to tell me that he was the Master of the Lodge up here instead of which he was the Master of the Jullundur Lodge, and had a circular sent him, regarding my case.

PRISONER.—I would ask, whether this has been recorded, as an addition to witness' former evidence.

DEPUTY JUDGE ADVOCATE.—I have recorded it in this day's proceedings.

Nunee Khan, late an Abdar in the service of H. E. Sir William Mansfield, sworn and examined.

Q.—How long were you in the Commander-in-Chief's service, and in what capacity?

A.—One year, as an Abdar.

Q.—Were you in the Commander-in-Chief's service during the months of September, October, and November, last year?

A.—Yes.

The question having been put partly in English, the President desired the Interpreter to ascertain whether witness knew the names of those months in Hindoostanee.

INTERPRETER.—No, Sir, he does not appear to know the Hindoostanee names.

PRESIDENT.—Nonsense, he must know their names in his own language better than in English

Here a scene of indescribable confusion ensued, Prisoner, Prosecutor, Judge Advocate, President, Members, Interpreter, and Witness, all appeared to be talking at the same time, when the President said, "Let the prisoner be brought nearer to me; no, witness, not prisoner."

The witness then drew nearer to the President.

INTERPRETER.—Witness states that he does not know the names of the months—in fact, does not know the names of any months either English or Hindoostanee, but distinctly states that he entered the Commander-in-Chief's service on His Excellency's arrival at Umballa from Bombay in 1865, and left about six weeks after His Excellency's arrival at Simla.

PRESIDENT.—Then that does not include these months?

PRISONER.—I wish all this recorded.

INTERPRETER.—I understand him now to say that he engaged with the Commander-in-Chief on His Excellency's arrival at Umballa last year, in April, and was dismissed about three months ago.

Q.—Do you remember when Captain Jervis had charge of the Commander-in-Chief's household?

A.—Captain Jervis took charge of the Commander-in-Chief's household from Captain Christie; does not know the months. He took charge for three months, and about three months after the Commander-in-Chief arrived—it was on the 1st of the month.

Interpreter had to use his utmost efforts to elicit the foregoing answer.

Q.—Do you remember that Captain Jervis was at Mahassoo last year?

A.—Yes, I do.

Q.—For about how long after the Commander-in-Chief left for Calcutta, was Captain Jervis at Mahassoo?

On this question being put, the witness looked as if he strongly suspected the Interpreter of some malicious design towards him, and no anwer was elicited.

Q.—Were you in charge of the Commander-in-Chief's cellars and did you keep the keys?

A.—Yes, I kept the keys, and was in charge.

Q.—When Captain Jervis was at Mahassoo, did you send out any wines to him?

A.—Yes, I sent wines to Captain Jervis at Mahassoo.

Q.—By whose order?

A.—By order of Captain Jervis.

Q—Whose was the wine you sent to Mahassoo?

A.—The wine was the Commander-in-Chief's.

Q.—At the time you sent out the wines to Mahassoo, did you always take the orders from Captain Jervis?

Here again Interpreter and witness didn't seem likely to come to an understanding, but after great efforts on the part of the Interpreter, the following answer was recorded:—

A.—I invariably took my orders from Captain Jervis.

Q.—Did you consider Captain Jervis' orders final and imperative? (Here great confusion took place again, it being a matter of great labor to make the witness understand the drift of the question.)

A.—I consider I was bound to obey Captain Jervis' orders.

Q.—What wines did you send to Mahassoo?

A.—I sent all kinds,—Champagne, Sherry, Beer, Sauterne, Maraschino, Curacao, Soda Water, Brandy, and Claret.

Q.—Did you send them on more than one occasion?

A.—Four times I sent them.

Q.—How much did you send the first time?

Here witness again looked suspiciously at Interpreter, and after some difficulty the following answer was recorded:—

A.—According to Memoranda. I had no order to write the accounts down myself, but I was to give them to be written down by the writer at 10 o'clock every morning; the writer having recorded it, I was to show the account in the Office to Captain Jervis to be initialed.

At this stage, about an hour before the usual hour for closing, the Court adjourned, as it was utterly impossible to make any decent progress in the face of the want of harmony between the answers as given by the witness, and the questions put by the Interpreter.

XIIIth DAY'S PROCEEDINGS.

Court re-assembled at 11 A.M., *on Friday,* 13*th July,* 1866.

Examination of witness Nunee Khan,—(*continued.*)

PROSECUTOR.—As the answer to the last question was very imperfectly recorded, I beg the Court will allow the question to be put again.

Q ALLOWED.—How much wine did you send to Mahassoo?

A.—Captain Jervis ordered that wine expended day by day should be written down by a writer, and that the Wine Account, so written down, should be shown to Captain Jervis daily, at 10 o'clock, in the Office, to be initialed by him. Captain Jervis used to come about 10 o'clock to the Office.

Q.—The first time that you sent wine to Mahassoo, how much did you send?

A.—As much as was ordered by Captain Jervis to be sent, and that quantity was put down on a memorandum.

Q.—How much did Captain Jervis order you to send the first time?

A.—Captain Jervis gave me no orders to write down; he ordered, whatever may be used, have it written down by the writer, and show it to me, and I will sign it.

Q.—Although you had no orders to write it down yourself, did you keep no memorandum for your own information?

A.—I kept none, except that sometimes I wrote it on the wall, and sometimes on a piece of paper.

Q.—Where is the paper on which you wrote your Memo.?

A.—The papers were in the Chupprassie's house, from the Chupprassie's house they were sent to the Persian Interpreter's Office, the Persian Interpreter sent for me, and showed them to me; whatever was in them, he told me; but what was here and there he could not tell me.

Q.—Do you recognise this paper, and what is it?

A.—The paper is, from my recollection, a Memo. of the Wine Account; part is in it, part is not.

Q.—Have you written down on that paper what wine you sent to Mahassoo?

A.—Yes, in this paper, some part is written, some is not.

Q. —Show where you have written what you sent to Mahassoo?

Witness shows the page in which it is written—some is written, some is not.

Q.—Will you read the page in which the wine sent to Mahassoo, is written?

Witness reads as follows:—date 26th, month unknown.—Beer, 6 doz.; Soda Water, 6 doz.; Whisky, 2 Bottles; Brandy, 2 bottles; Sherry, 17 bottles; Claret in Pints, 10 bottles; Sauterne, 3 bottles; Maraschino, 6 bottles.

Another date, month unknown,—Champagne, 4 dozen quarts and 1½ dozen pints.

Total, 33 dozen of sorts were sent to Mahassoo, but of this only a portion is accounted for here.

PROSECUTOR.—Will the Court allow the Interpreter to compare the page with the witness' reading of it.

INTERPRETER.—I have done so, and find it to tally with witness' statement.

Q.—Who took this wine to Mahassoo?

A.—Coolies took it to Mahassoo.

Q.—Who got the coolies to take it?

A.—The Khansamah sent for the coolies to take it to Mahassoo.

Q.—Do you know who went in charge of the wines to Mahassoo?

A.—Captain Jervis' Madrassee Butler went with the coolies, also His Excellency's Khitmutgars; but the wine was in charge of the Butler, by order of Captain Jervis.

Q.—What are the Khitmutgars' names?

A.—Baboo Khan and Nubbee Khan, Khitmutgars; Meer Khan, His Excellency's Butler; a Cook, name unknown; and Bussatee, Musalchee.

PROSECUTOR.—Has no more questions to put.

On the prisoner being asked whether he wished to cross-examine the witness, Captain Jervis rose and said, I have no desire to cross-examine; the witness has proved for me everything I wish to prove.

Hussein Khan, late Khansamah to His Excellency Sir William Mansfield, sworn and examined.

Q.—Between what dates were you in the Commander-in-Chief's service?

A.—From April 1865 till 19th February 1866, but I was only paid till 10th February.

Q.—When Captain Jervis was at Mahassoo, did you supply his table?

A.—Yes, I did.

Q.—Did you send Oilman's Stores?

A.—Captain Jervis' stood in the store-room; Sauces, Vinegar, Fish, Sugar, Tea, and Coffee, were made over to his Butler, with orders to take them to Mahassoo, whither they were sent; at the same time, Captain Jervis gave orders to His Excellency's Butler to take up table linen, knives, forks, cutlery, and glass, and he went with them.

Q.—Did you send any preserved provisions in tins?

A.—Yes; Lobster, Oysters, Salmon, Asparagus, Mushrooms, Bacon in Tins, Herrings à la Sardine, Dried Fruits in Jars, and other Fruits in bottles. Hams and English tongues came from the Merchants, but whether in His Excellency's name or Captain Jervis', I don't know.

Q.—Did these stores you sent belong to His Excellency or to Captain Jervis?

A.—When I entered the service of the Commander-in-Chief, Captain Christie was in charge of the household; the Stores came from Bombay; Captain Christie had the cases unpacked, and had the Stores arranged in the Store-room, and there was also Wine. Captain Christie gave me the keys, and told me to look after everything; whatever was issued daily was entered in a Book, which was inspected by Captain Christie. On the 1st September 1865, Captain Jervis took charge of the household. Captain Jervis went over the Store Account, and in person came to the Store-room. I said the duty of looking after everything was too much for me, and that the wine should be separated from the Stores; then the wine was made over to the Abdar. The place where the Oilman's Stores were kept was converted by Captain Jervis into his Orderly Room; this room was kept open from about 9 A.M., till 4 P.M., when it was locked. The Stores sent to Mahassoo belonged to the Commander-in-Chief. Captain Jervis had none in the Store-room.

Q.—Did you make a memorandum of the Stores you sent out?

A.—No, I made none.

Q.—How many times did you send out Stores to Mahassoo?

A.—The first time the things were sent in large quantities, and then three or four times, whatever ran out was replaced.

Q.—Did you get the coolies to take the Stores to Mahassoo, and how many?

A.—Captain Jervis sent for the coolies (*Ladakees*) from Mahassoo; I don't know the number; and sometimes I sent for the coolies, at times five, and up to sixteen as they were required.

Q.—You have stated that you supplied Captain Jervis' table at Mahassoo, did you keep an account or memorandum of this expenditure?

A.—The accounts of the expenditure are in Captain Jervis' possession, and if Captain Jervis is asked for them, he can produce them.

PRISONER.—I shall be happy to show a fair copy of them, if the Court desires it; they are made out in English, the originals are in the native character; they should be in the possession of witness or his Moonshee. I have not got them.

Q.—Have you in your possession any account showing the amount of the expenditure on each occasion at Mahassoo?

A.—Yes, I have the totals of four or five day's expenditure of the meals served at Mahassoo. I have no papers or accounts showing the entire expenditure, because two Sundry Books and one Dinner Book, (both dated Simla), containing the accounts of His Excellency, were retained by Captain Jervis; also two Sundry Books, containing the Cash Expenditure, on one side or page of which His Excellency's accounts were entered, and on the opposite

page Captain Jervis' accounts were shown, and so on; there are also, in Captain Jervis' possession, six or seven Bills, filed. They were taken away from me on the night of the 14th November last, about 9 P.M., Captain Jervis took them and locked them up. He paid me some money on account, and said he would pay me the balance on arrival at Calcutta; he paid me here, Rs. 1,292 by a cheque on Calcutta, and 400 by a cheque on the Simla Bank, stating that he had no more money, His Excellency not having yet paid. Of this money only the cheque for Rs. 400 was His Excellency's, the balance, Rs. 1,292, was out of his (Captain Jervis') private purse.

PRISONER, here desired to be informed on what charge witness was giving his evidence.

Q.—What is the amount of such items of the Mahassoo expenditure as you have notes of?

A.————On 30th September, ... Rs. 74 14 11
2nd October, ... „ 47 15 0
4th „ ... ... „ 47 13 10
7th „ ... ... „ 19 0 6
8th „ ... ... „ 20 6 4
9th „ ... ... „ 35 5 2
11th „ ... ... „ 41 3 4
19th „ ... . „ 21 5 8

Total Rs.... 307 14 9

Rupees three hundred and seven, annas fourteen, and pie nine only.

Q.—When were you paid for what you supplied to Captain Jervis at Mahassoo.

A.—Captain Jervis, on arrival at Calcutta, paid me: it was about the 6th January 1866.

Q.—What was the amount of the Bill in which the Mahassoo expenditure was included?

A.—Captain Jervis paid me the balance in full at Calcutta, Rs. 880. The amount of Rs. 196, or there abouts, for Cash in August, is included in the sum of Rs. 700 paid to me by Captain Jervis on his private account. And the sum of Rs. 2,572 is the total of the two cheques received by me at Simla from Captain Jervis, namely, ... Rs. 1,292
and ... ... „ 400
and Balance received at Calcutta ... ... „ 880

Rs.... 2,572

Q.—Was your Bill of about Rs. 700 against Captain Jervis a separate account, and did you present it as a separate account?

A.—I showed this separate Bill to Captain Jervis.

Q.—Did Captain Jervis pay this separate Bill of about Rs. 700 when you showed it to him?

A.—When I showed the Bill to Captain Jervis in Calcutta, Captain Jervis ordered his Madrasee servant to take down the numbers of all the vouchers, also the accounts, from the Commander-in-Chief's dinner book, and His Excellency's miscellaneous accounts. Captain Jervis' private accounts to be included, and the grand total made—this was done, when the balance of Rs. 880 was struck and paid me.

Court adjourned at 4 P. M., till 11 A.M., Saturday, July 14th 1866.

XIVTH DAY'S PROCEEDINGS.

Court re-assembled at 11 A.M., *on Saturday* 14*th May*, 1866.

Examination in Chief of Hussein Khan,—(*continued.*)

Q.—You said you got coolies to carry the stores to Mahassoo. How were these coolies charged?

A.—These coolies were charged in the books of "Sundries" in Captain Jervis' possession. The entries were made by the writer employed.

Q.—Were all such items entered in the books of "Sundries" charged to the Commander-in-Chief?

A.—At the end, all items so entered in the "Sundry" book were charged and settled in Calcutta in January last, when the total balance was Rs. 880.

Q.—In all the Sundry book you have mentioned, were the entries chargeable to the Commander-in-Chief?

A.—These "Sundry" books contained entries chargeable both to Commander-in-Chief and Captain Jervis.

PRISONER.—May I ask if that last question was put by the Court?

Q. COURT.—You stated that you kept the Commander-in-Chief's accounts on one page, and Captain Jervis' on the opposite page. State now on which page were the coolies charged?

A.—I can't tell from recollection. Two accounts were kept separate in the one book. The Commander-in-Chief's on the one side and Captain Jervis' on the opposite side. The grand total was made in Calcutta; in that total, this charge of coolies was included.

Q.—When you were paid a balance on the last occasion, did you give a receipt for the whole, or did you give a separate receipt to Captain Jervis for the amount paid by him on his private account?

Court here warned the witness that if he would not give direct answers, the Court would exercise its authority and compel him to reply precisely.

A.—I neither gave nor took a receipt.

INTERPRETER.—I cannot tell what the fellow has been revolving in his mind.

PRESIDENT.—No! or his stomach either!

Q.—Did you ever give Captain Jervis a receipt for any sum you may have received from him?

A.—On every other occasion, I gave a receipt; these receipts appear in the books I refer to: the only occasion on which a receipt was not given by me was in this matter of Rs. 880, which appears on separate sheets of foolscap paper.

Q.—When you received this balance of Rs. 880, was it in cash or by cheque?

A.—By a cheque, which was duly cashed.

Q.—Have you ever supplied any other officers of the Commander-in-Chief's Staff with Tiffins, Dinners, Breakfasts, or Suppers?

A.—Once, Captain Christie ordered a few articles such as a couple of fowls, Chicken-salad, and Hunter's Beef, amounting in value to rupees five or six. There were no English stores supplied. No other member of the Commander-in-Chief's Staff was so supplied.

PROSECUTOR.—The item detailed might be left out.

PRISONER.—I beg that nothing may be left out; the answer should be recorded as given.

PROSECUTOR.—Yesterday the prisoner wished the answer curtailed, which was the reason of my making the remark.

PRISONER.—The prosecutor evidently has mistaken what I stated. I suggested that the witness should be compelled to give direct answers to all questions and not be allowed to take up the time of the Court and others by wandering from the subject under investigation by the Court.

Q.—You have stated that Rs. 1,692 were paid to you in November last, state on what accounts was this payment made, and for what month?

A.—It was for sundries, some for September, some for October, and some for cash in August, and in September for lighting up, and sundry expenses of a large entertainment given by

the Commander-in-Chief; the Bill was supported by vouchers, both from the Commander-in-Chief and Captain Jervis. There were further sundry items of advances made on the building account, also advances to Bunneah, and Rs. 103 cash for a hoondee on Murree to bring a new cook from there, and Rs. 612 cash on account of pay of servants advanced by me.

PROSECUTOR.—The witness has stated that when he was paid Rs. 1,692 on the 14th of November, he was told by Captain Jervis that Rs. 400 only of that was the Commander-in-Chief's money, that the Commander-in-Chief had not yet paid him (the prisoner.) Before closing the examination-in-chief of the witness, I should request the Court to examine the prisoner's closed cash account for November, and to note on the proceedings that the balance struck on the 30th of that month shows a credit in favor of the Commander-in-Chief. I should also wish it noted that the November payments, as shown in the prisoner's cash account for that month, do not include any such sum as Rs. 1,692 to the Khansamah, or anything approaching it.

Court closed.

Court intimated that the several disbursements appearing in the month of November, as observed by the Court, amounted to Rs. 1,629, including balance at credit at the end of the month. The Court also took this opportunity of reminding the Prisoner of his promise to produce the fair copy of the accounts stated to be in his possession.

PRISONER.—I submit to the Court, that it forms no part of my duty in these proceedings to assist the Prosecution; I presume that as Sir William Mansfield has brought these charges against me, he has sufficient evidence to prove them.

A discussion arose in Court, whether witness meant it to be understood in his reply to question No. 8, that no English Stores were supplied by him to Captain Christie.

WITNESS.—I still state that no English Stores were supplied.

INTERPRETER.—Salad can't he made without Vinegar, Mustard, Oil, &c., and these come within the term "English Stores."

Examination-in-chief closed.

PRISONER.—Declines to cross-examine for the reasons given by him on the previous day.

Q. COURT. In the Tiffin you stated you supplied to Captain Christie, were there any English Stores, and where were they got from?

A.—There were no English Stores, only the things I have stated.

Q.—How came you to supply the money for payment of the servants, amounting to Rs. 612, and was this ever done before?

A.—You may enquire whether Captain Harbord and Captain Christie did not continually borrow cash from me. Whenever they required it, the servants used to take advances from me, and they are still in my debt. Captain Jervis sent word to me to pay the servants two months' pay; I was short of funds and borrowed about Rs. 150 or 200 from Jourie and Futtoorea, Bunneahs of Chota Simla, and paid the servants.

Q.—You have stated you usually gave receipts for monies. Why did you not give Captain Jervis a receipt for Rs. 880?

A.—Captain Jervis gave me the cheque, and sent me away to get it cashed at the Bank; at that time I was short of money, and pawned my ring to raise money. At that time, I was owed about Rs. 2,000 more, for money expended on account of His Excellency.

Baboo Khan, Abdar Butler to His Excellency Sir Willam Mansfield, sworn and examined.

Q.—How long have you been in the Commander-in-Chief's service, and in what capacity?

A.—I am the under Butler; I entered His Excellency's service in April 1865.

Q.—When Captain Jervis was at Mahassoo last year, did you go there, and what business had you out there?

A.—I went there in charge of the table linen, silver and cutlery.

Q.—Who went with you, and did other things go beside silver and cutlery, and how long did you stay at Mahasoo?

A.—I stayed three days the first time; Golab Mate, also Bussatee Musalchee, and Nubbee Buksh Khitmutgar, went with me. Golab, the Abdar, was with the wine, and the table linen was with me.

PROSECUTOR.—Had no more questions to put.

PRISONER.—Declines to cross-examine.

Bhugtoo, Mate of His Excellency Sir W. Mansfield's Jampanies, sworn and examined.

Q.—How long have you been in the Commander-in-Chief's service, and in what capacity ?

A.—I have been mate of the Jhampanees since April 1865.

Q.—When Captain Jervis was at Mahassoo last year, were you in the habit of taking things out there to him ; who helped you, and how often did you go there ?

A.—No, I never went to Mahassoo with Captain Jervis, I went there once when the Commander-in-Chief went.

PROSECUTOR.—Had no more questions to put.

PRISONER.—Declines to cross-examine.

The Court adjourned at 4 P.M., till 11 A.M., on Tuesday, 17th July 1866.

XVTH DAY'S PROCEEDINGS.

Court re-assembled at 11 A.M., *on Tuesday*, 17*th July*, 1866.

PRISONER.—May I now be allowed to see the papers connected with the examination of the Witnesses on the 14th May by His Excellency Sir William Mansfield in his private room, as well as all the papers connected with the Court of Enquiry, the charges there preferred against me, and the finding of the Court? It will be my chief justification in regard to the alleged contumaciousness to shew the whole of these proceedings.

Deputy Judge Advocate read to the Court their order made at its 6th sitting viz.,—that after the Native witnesses had been examined before this Court, the Prisoner should have access to their statements, made before the Court of Enquiry and Commander-in-Chief.

The Court's attention is requested to Bengal Military Regulations Section 22, Para: 10, by which permission is given for the production of Proceedings of Courts of Enquiry, only as far as statements recorded therein, become a point at issue before the Court.

PRISONER.—I submit that the statements recorded before the Court of Enquiry, are distinctly at issue before this Court, as I can shew if allowed.

DEPUTY JUDGE ADVOCATE.—To understand the Bengal Military Regulations properly on this subject, the Court should remember that the proceedings of Courts of Enquiry are privileged communications, and that it is by a special exception that any communications made before them, can be made known to any other person than the authority convening the Court. The Bengal Military Regulations contain such exception, and it cannot be extended further.

PRISONER.—I would wish to add, that the restrictions quoted by the Deputy Judge Advocate are not found in any of the standard works on Military Law, and the absence of such restrictions, is strong negative evidence on the point, as shewing they are not contemplated The Court will see how the proceedings of the Court of Enquiry *do* form an issue in this case, when I state that the cause of my leaving the Court, which has been alleged against me; and my neglecting to produce papers, as laid in the 2nd charge; all arose, and are justified by the char acter of the charges, as well as the other proceedings, which took place at the Court.

As to the authority quoted by the Deputy Judge Advocate, it has no connection with Officers of Her Majesty's Army; the text book for the guidance of Courts Martial, is D'Aguilar and no other, and no such restriction or rule is to be found there.

In the absence, therefore, of all binding rule on the subject, I submit to the Court, that the general principles of justice, equity, and good conscience, should regulate these proceedings, and I would ask, why, if all was conducted with propriety and fairness, any objection is made to the production of the proceedings and finding of the Court of Enquiry.

I again repectfully repeat that the production of these papers is important in the last degree to me.

Court closed.

DEPUTY JUDGE ADVOCATE.—He understood that the permission already given to the Prisoner, would have to be acted on as follows;—The Prisoner has access to the former statements of the Witnesses; he may then cross-examine any of these Witnesses, as to their former statements, if he thinks they are at variance, but that such variance should only be alleged in presence of the Witnesses accused of variance, who may have an opportunity of reconciling the discrepancies.

Court's order was read, viz:—that at the present stage of proceedings, only such portions of the proceedings of the Court of Enquiry, should be placed at the Prisoner's disposal, as may be necessary for the purpose of comparing the evidence of witnesses before this Court, with their statements, previously given, before the Court of Enquiry and Sir William Mansfield.

LALL SING, CHOWKEYDAR, WAS SWORN AND EXAMINED.

Q. 1.—Whose service are you, in, and in what capacity?

A.—I am in Lord Wm. Hay's service, I am chowkeydar of his house at Mahasoo.

Q. 2.—Were you in Lord William Hay's house at Mahasoo, when Captain Jervis was there last year, and have you been in charge since?

A.—Yes.

Q. 3.—When Captain Jervis left Mahasoo last year, did his property remain there?

A.—Yes.

Q. 4.—Amongst the things was there any wine, and if so, how much?

A.—Yes, there was wine of sorts, about 3 dozen of beer and wine.

Q. 5.—When was this wine taken away?

A.—By 11th May, all Captain Jervis' property had been removed.

Q. 6.—Do you remember when the property commenced to be removed?

A.—The whole of the property was removed between 30th of April and 11th May.

Q. 7.—Did you ascertain from Captain Jervis, that he had received all his property, and on what date?

A.—Yes, I asked him on the 12th of May, Captain Jervis said he had received everything.

Q. 8.—Where was Captain Jervis at the time.

A.—In Major Innes' house.

PRISONER.—May I ask to what charge, this evidence refers?

PROSECUTOR.—It refers to the first instance of the 1st charge.

Prosecutor had no more questions to put.

Prisoner declines cross examining the witness.

RAHEEM-UL-DEEN, DUFFADAR, IN CHARGE OF THE STABLE SWORN, AND EXAMINED.

Q. 1.—How long have you been in the Commander-in-Chief's service and in what capacity?

A.—In the stable department, from the 20th January. I am Duffadar, in charge, and am still in His Excellency's service.

Q. 2.—Were you at Calcutta and Barrackpore, in charge of the Commander-in-Chief's horses last winter?

A.—On the 20th January I was sent for by Captain Jervis; I was at both places, in charge of His Excellency's horses.

Q. 3.—When in Calcutta did you receive any heel ropes into your charge, if so, who gave them to you, and what did you do with them?

A.—I received 4 heel ropes from Captain Jervis on the 11th March; on the 12th March, two horses of theCommander-in-Chief, with 2 heel ropes, were started for the Hills, and on the 20th March, the remaining 2 heel ropes were sent with 2 other horses of the Commander-in-Chief's, to Lucknow; on the 24th March, I received 6 more heel ropes: on the 25th of March, three horses of Captain Jervis', Captain Jervis, I, and Abbey, started by rail from Howrah station for Delhi: on the 27th we reached Delhi, and the 6 hee ropes were put on the horses.

Q. 4.—When did you arrive at Simla?

A.—On 13th April.

Q. 5.—Did you give any of the horses more heel ropes, after arrival at Simla?

A.—Yes, Captain Jervis gave me one heel rope for his own horse, and I gave it to his syce.

Q. 6.—Were you present when a box containing horse clothing arrived at Simla, if so, state what occurred on this occasion?

A.—When the box was opened, I took out 8 sets of horse clothing, 6 belonged to the Commander-in-Chief and 2 to Captain Jervis. I was told by Major Gordon to take charge of the Commander-in-Chief's, and to take Captain Jervis' orders regarding his, I handed them to Captain Jervis' servants.

PRISONER.—I am quite willing to allow the Prosecutor to record my admission, that the things, enumerated in the 3rd instance of the 1st charge, were taken by me out of His Excellency's stores. It will perhaps save two days labor of the Court.

PRESIDENT.—Mr. Prosecutor, do you require to put any further questions to this witness.

PROSECUTOR.—Not if the Court considers that admission sufficient, I shall, however, requir to examine Major Gordon on this point.

PRESIDENT.—You must satisfy yourself whether you require further evidence of the present witness, after such and admission.

Prosecutor has no more questions to put.

Prisoner declines to cross examine.

MAJOR T. E. GORDON, PERSIAN INTERPRETER AND ACTING AIDE-DE-CAMP TO HIS EXCELLENCY SIR W. MANSFIELD, SWORN AND EXAMINED.

Q. 1.—When did you take over charge of the stables from Captain Jervis?

A.—On the 14th April.

Q. 2.—Did you open a box of horse-clothing, received from Calcutta, on or about that date?

A.—I opened a box of horse-clothing about the 17th, as far as I can recollect, there were 8 sets of horses clothing in it. The Duffadar in charge of the stables was then present and took two sets of the lighter clothing, saying that they belonged to Captain Jervis. The other six sets he said belonged to the Commander-in-Chief. He took the two sets away to Captain Jervis' quarters.

Q. 3.—Had you, previous to this, any conversation with Captain Jervis relating to the transfer of the stables?

A.—On taking over charge of the stables, Captain Jervis mentioned to me, that there was a large bill due to Monteath and Co., for stable equipment. I said that I thought he should settle that, and that I would be responsible for any bills incurred Captain Jervis objected, and said that he would write to Monteath and Co., and tell them to correspond with me on the subject. Captain Jervis also mentioned the sum of Rs. 1,000 due for a horse that had been purchased in Bombay.

Q. 4.—When Captain Jervis told you that there was a large bill due to the Commander-in-Chief, did he tell you that any of the articles in that bill had been appropriated to his own use?

A.—No.

Q. 5.—Had he informed you at any previous date, or has he done so subsequently?

A.—Before the Committee of Audit, Captain Jervis said to me, that he should like to see the Duffadar, regarding the accounts for the gram and grass for the horses, as the Commander-in-Chief's, his own, and also Captain Harbord's, were mixed up. I merely replied that I thought the Duffadar had no such accounts. That is the only conversation I ever had with Captain Jervis regarding the stable accounts, beyond what I have mentioned before.

Q 6.—When you were told by Captain Jervis that the accounts were mixed up, did you enquire as to the circumstances alleged?

A.—No.

Q. 7.—When you were told by Captain Jervis, that a lage bill was due to Monteath and Co., did you write for it, and is this the correspondence?

A.—I mentioned the circumstance to the Commander-in-Chief, a few days after taking charge. He told me to write to Monteath and Co for the bill: I did not carry out his instructions at once, as I should have done; but wrote on the 2nd of May. This is the bill, with this letter of mine of 9th May.

BOTH WERE HERE READ OUT.—Bill, amounting to Rs. 1,147. I kept no copy of my letter: on the 14th May, I wrote to Monteath and Co., in reference to the bill, to the effect that the things mentioned in it, could not be accounted for in the way stated, and that as possibly some of them might have been got for some member of the Staff and not for His Excellency, requested that he would send the vouchers, upon which these things had been obtained. I have no copy of the letter. I received a short letter saying, that he would send what was required immediately. I have not got his reply; but it is referred to in a subsequent letter. I tore it up. I cannot say whether I tore it up or not. I looked carefully for it in the basket, but could not find it."

Witness here produced a letter from Monteath and Co., dated 24th May, accompanied with bill and vouchers. Read out.

ANSWER CONTINUED.—This letter, dated 18th June, is not addressed to me, it is addressed to Major Flood. Here are also two telegrams from Major Flood: the 1st message sent, was enquiring whether Captain Jervis had a private account with Monteath and Co., for articles supplied to him last cold season in Calcutta. As an immediate reply was not received by telegraph, it was supposed that this might have been from the reply not being directed to be so sent. The 2nd telegram was merely to reply to the 1st. I state this to the best of my recollection. This is the telegram received 19th June, by the Military Secretary and handed to me.

Q. 8.—Will you examine these papers and vouchers of Monteath's Bill, and state by whom they are signed, and if the vouchers correspond with the items in the bill?

PRISONER.—I have already fully admitted that the articles were His Excellency Sir William Mansfield's, and that I took them from his stores, for my use. I as freely admit that I ordered them, so that evidence on these points is superfluous.

Q. 9.—You have been directed by the Commander-in-Chief to produce correspondence between yourself and Mackenzie, Lyall, and Co. Is this it?

A.—Yes, this is the correspondence. Two letters from Mackenzie, Lyall, and Co: there are no letters of mine. I wrote for accounts, I think the first is the reply to it. I have no copy of my letter, to it was a request for the accounts.

Letter 11th June 1866, and bills I, II and III, amount Rs. 1,350-12-0).

I then wrote a second time. I have no copy of my letter, I asked forthe details of the items of the bills quoted. Reply, June 26th, details of 1st ..... Rs. 405 2 } read out.
,, 2nd ..... ,, 48 8 }

Q. 10.—Were you present at Mackenzie, Lyall, and Co.'s, when any of the things appearing in the bill were bought?

A.—Yes, I was, when the Japanese articles were purchased, January 17th about, I cannot specify the date. I happen to know that I was present, from seeing the articles mentioned here.

Q. 11.—What occurred on that occasion?

A.—The Commander-in-Chief bought these things so far as I can recollect, I gather so from seeing they are charged to him, as well as knowing many of the articles, and having seen them purchased. Captains Christie and Jervis were present then. Captain Christie made purchases then, and I saw him tell the man to charge it to him.

Q. 12.—Did Captains Jervis and Harbord buy anything on that occasion?

A.—Captain Harbord was not present on that occasion; I cannot distinctly state whether Captain Jervis bought anything or not.

Q. 13.—Did you find these books marked Nos. 1, 4, 5, 6?

A.—There is a tent pitched in "Woodville" compound, the Commander-in-Chief's present residence. I kept the saddlery in it and stable equipment: on opening a box, in which a couple of old leading reins were thrown, I saw old papers lying at the bottom of the box: on examining them, I found these with a bundle of vouchers belonging to one of the Books. I cannot say which book, I have not the vouchers.

Q. 14.—When was this?

A.—I cannot well recollect. I recollect it was after the Court Martialcommenced its sitting, and it was a Sunday evening.

Q. 15.—Did you on this or any other occasion find other books relating to His Excellency's Household?

A.—I found some stable books. I think those were the only books I found; in fact the vouchers are still lying in the box yet, I did not take them out, two visiting books, if I recollect right and two long old books.

PRISONER.—May I ask which charge this evidence has reference to?

PROSECUTOR.—To the 1st charge.

PRISONER.—To which instance of the 1st charge.

PROSECUTOR.—(After considerable delay and much hesitation.) The last question refers to the 2nd charge, not to the 1st, as I just stated.

Court adjourned at 4-55, P. M., till 11 A. M., on Wednesday, July 18th 1866.

XVIth DAY'S PROCEEDINGS.

Court re-assembled at 11 A.M., *on Wednesday, July* 18*th* 1866.

Examination in Chief of MAJOR GORDON,—(*Continued.*)

Q.—You say that you found some books in a box, will you say to what period they refer?

A.—They were Bombay books, and Bombay accounts. With reference to my finding them, I stated I found them on a Sunday, immediately preceeding the 1st sitting of the Court Martial.

Q.—Have any of the articles of stable gear, acknowledged to have been taken by the Prisoner for his own use, been returned by him.

A.—No.

Q.—Is the horse clothing now in use by His Excellency Sir William Mansfield marked with any distinguishing mark, or initials?

A.—No, it is all of one pattern.

Prosecutor has no more questions to put.

PRISONER.—If the Deputy Judge Advocate and Prosecutor persist in objecting to the production of the papers, and finding of the Court of Enquiry, may I request that the matter be referred to the Commander-in-Chief for His Excellency's official decision, unless the Court itself decides the point in my favour, Section 933, page 350, of Simmons on Courts Martial, especially provides for such a reference.

If I am not mistaken, His Excellency Sir William Mansfield stated that when Major Gordon gave his evidence, certain other papers would be produced, viz:—certain papers connected with the Court of Enquiry, of which *he* is specially cognizant: as it is possible I may have been mistaken in regard to the statements referred to, and as the papers I wish to be *produced*, are included in those, to which my previous remark refers, I do not wish to press the point any further.

DEPUTY JUDGE ADVOCATE.—That refers only to some correspondence, and not to the proceedings of the Court of Enquiry.

PROSECUTOR.—As the entire proceedings of the Court of Enquiry do not form part of the case for the Prosecution, and as the permission of the Commander-in-Chief has already been given to free access on the part of the Prisoner to all minutes of the evidence recorded in the Proceedings or attached thereto, as they relate to the charges before this Court and the evidence given before this Court, I would submit that the question of the proceedings should be postponed until the Defence:—if it is then shewn to the satisfaction of the Court that the entire proceedings of the Court of Enquiry are essentially necessary to the Defence, the question of their production may be discussed, but I am instructed to state that the proceedings of the Court of Enquiry are considered confidential, and that in placing them in the hands of the Judge Advocate, it was not intended that they should be available for record by this Court, without a special permission to that effect.

PRISONER.—I still beg the reference may be made, as essential towards my cross-examinations.

PRISONER.—I wish the following remark by the Deputy Judge Advocate recorded. The 'fact of your having already taken up the time of the Court, for half an hour, is some-'thing to note in its proceedings.' My object in asking the the Court to note down the Deputy Judge Advocate's remark is, because I wish to shew the apparently unfriendly feeling he has shewn towards me throughout, in regard to which I shall probably make a reference to the Court itself hereafter.

Court is closed.

Court decide, to communicate the Prisoner's application to the Adjutant General, for the orders of the Commander-in-Chief, and a letter to the Adjutant General is despatched accordingly. On the other reference, the Judge Advocate states as follows; "my remark is not correctly quoted. I proposed that as Prisoner's application had come to nothing, it should be withdrawn: he then said, 'he preferred that it should remain on record;' and I said 'it stood for half an hour's worth.

The Court ordered the following entry with reference to the Prisoner's remark on the animus displayed by the Deputy Judge Advocate.

The Court record that they consider the Deputy Judge Advocate has shown no unfriendly feeling or animus whatever against the Prisoner, and that the prisoner's remark is uncalled for and reprehensible.

PRISONER.—I do not know to what extent it will be necessary for me to cross-examine this Witness, till a reply is received from the Commander-in-Chief regarding the application for the proceedings of the Court of Enquiry."

Court decide to go on with the examination of another Witness.

EDWARD ABBEY.—BUTLER TO THE COMMANDER-IN-CHIEF, IS SWORN AND EXAMINED IN CHIEF.

Q.—When did you come up from Calcutta, and with whom?

A.—I left Calcutta on 25th March last with Captain Jervis.

PRISONER.—" Might I be allowed to see the statements made by this Witness before the Court of Enquiry, as also his statements made before Sir William Mansfield in His Excellency's private room?

DEPUTY JUDGE ADVOCATE.—Witness was not examined on points connected with the charges before this Court, at the Court of Enquiry. The statement of witness before Sir William Mansfield in His Excellency's private room is handed over to the Prisoner.

Q.—What is this book now handed to you, and was it in your charge?

A.—It is the Bazaar Expense Book, and was in my charge.

Q.—Is it one of the Commander-in-Chief's house books?

A.—It is.

Q.—For the days you have stated you were on the road from Calcutta, are there any entries in that book?

A.—Yes, on 25th, 26th, 27th, 28th, and 29th, March.

Q.—How do you account for entries being made in the Bazaar Account Book for those days, and were the items provided for His Excellency's table?

A.—No, Captain Jervis' travelling expenses, dâk bungalow hire, and, in one or two instances my own expenses, are included.

PRISONER.—May I be allowed to look at the Bazaar Account Book referred to?

PROSECUTOR.—There are more questions to be put regarding it. It can be handed over to the Prisoner presently.

Q.—What are the entries in that Book, and what is their character?

A.—On the 25th Rs. 2-8, 26th Rs. 6-14, 27th Rs. 13-10, 28th Rs. 3-8, 29th Rs. 20-12.—I can tell a number of them, I cannot tell you all.

PRISONER.—The answer is incomplete as recorded by the Deputy Judge Advocate, I should wish it recorded exactly as it fell from the witness.

WITNESS.—May I be allowed to answer that please?

COURT.—No.

DEPUTY JUDGE ADVOCATE.—But what is their character.

WITNESS.—What do you mean Sir, please.

PRISONER.—What I wish to call the attention of the Court to, is the ignorance of the witness

Q.—How do you account for the road expenses being entered in the Bazaar expenses?

A.—By order of Captain Jervis.

Q.—Has Captain Jervis seen and approved and signed for them, as to their correctness?

A.—He has.

Q.—When Captain Jervis signed his name across that page, was he aware that the items, included his own travelling expenses?

A.—He was.

Q.—You have stated the entries included your own expenses, what were they?

A.—At Kurnaul 26th eight annas Bungalow hire, at Delhie 27th see Delhie Bill.

COLONEL CARMICHAEL, A MEMBER OF THE COURT.—Witness is going backwards.

WITNESS.—I beg pardon.

On the 25th the Capting's dinner Rs. 2, eight annas I cannot account for. On the 26th, bread and butter annas 12; Capting's breakfast was Rs. 1-8; fruit I bought at Benares 8 annas; at Allahabad Rs. 2-8 or 2; I paid to the Station Master for Capting's dinners. There was also some coffee, 12 annas; that is all I can give of the 26th, on 27th; you have the Delhie Bill.

DEPUTY JUDGE ADVOCATE.—No not the Delhi bill. On the 27th a pint of beer 0-12-0. Soda water I drank myself 4 as.

DEPUTY JUDGE ADVOCATE.—What are you reading from ?

WITNESS.—The Delhi bill.

DEPUTY JUDGE ADVOCACTE.—Is it the original bill ?

No, one that I wrote for afterwards. On 27th board and lodging Rs. 5, pint of Beer 12 as., room No. 4, occupied by your servant, that's myself, Rs. 1. There was another two items, but I don't recollect them, on 27th I destroyed them. I destroyed the bill, and other two items, after the Captain had signed the accounts, but I written and got these bills afterwards.

On the 28th; Kurnaul. I can only tell you one or two items there, Rs. 1-8, was for Dawk bungalow hire, 8 as. for biscuits. I cannot say what the other items are.

On the 29th. Bill supplied by Mrs. Bain, that I destroyed, wrote for another, but could not get it.

DEPUTY JUDGE ADVOCATE.—Can you speak to the amount of the Kalka bill?

WITNESS.—" No.—Kukur Huttee and Siree expenses also I wrote for, but could not get them."

Q.—How did you live on the road ?

A.—I brought refreshments with me by order of Captain Jervis.

Q.—When you entered the travelling expenses in the Bazaar Book, why did you enter them as Bazaar expenses ?

A.—I asked Captain Jervis, whether I should enter them as travelling expenses : he said, "never mind enter them as Bazaar expenses."

Q.—Are these several items you have enumerated, totalled at the bottom, and what is the total ?

A.—The total of Bazaar expenses from 1st to 29th March, included, is Rs. 504-12-2.

Q.—Then the items on account of travelling are included under that head of Rs. 504-12-2.

A.—They are.

Q.—How were the expenses on the road defrayed ?

A.—By me, out of money advanced to me by Captain Jervis.

Q.—On what account advanced ?

A.—The Commander-in-Chief's house expenses.

Q.—Did you keep at this time, a separate note on Captain Jervis' account, for sums expended on Captain Jervis' account ?

A.—I did, these are Captain Jervis' private accounts or copies of them, and this is the draft of a letter I wrote to Captain Jervis.

Captain Jervis' account from 1st March to 31st March read out "on 25th March horses crossing to Howrah, Rs. 139 : Total Rs. 142-2-9.

Q.—Have you the sums expended for the Commander-in-Chief for March ?

A.—I have, and produce them, Captain Jervis has the original.

Deputy Judge Advocate begins to read a copy.

PRISONER.—I submit that a copy is no evidence at all, that is, unless the originals are not obtainable : before copies of particular documents can be received or even *looked at*, by any Court, whether Civil or Military, the *impracticability* of obtaining the originals must be *proved*, to the satisfaction of the Court, this is one of the fundamental rules of evidence, and even when, after proof of the impracticability of obtaining originals is proved, copies must be *authenticated* by undoubted evidence, and shown to be beyond suspicion, before they can be

trusted. The attempt now made to produce copies, without any of the preliminary steps in regard to the original being taken, is, I submit, opposed to the first principles of jurisprudence. The account now produced in copy, is a private account, as I understand, between me and Abbey, and has nothing to do with the accounts of Sir William Mansfield. I shall have no objection, however, to produce the original, if the Court wish it, as I believe I have it.

DEPUTY JUDGE ADVOCATE.—The prisoner has had every opportunity of producing the originals, that witness deposes to having delivered to him. I wrote to him before this trial commenced, to produce all and every document connected herewith.

PRISONER.—"I respectfully submit that no copies or drafts, which constitute "secondary evidence" can be produced, until the impossiblility of obtaining the *originals* has been proved. I have no objection to anything true being produced; but this an universal maxim, and the account now produced in *copy*, is an account between me and the witness, and is a private account between us, having nothing to do with Sir William Mansfield, until the account is rendered by me in full. That the Court may not suppose that I am raising any vexatious objections, I would wish it to be understood, that I have from the first maintained, and still wish to maintain, that private accounts, and memoranda between me and third parties, are essentialy *private* between *me* and *them*, and are totally distinct from accounts which *I* render *to* His Excellency, and that while His Excellency has a right to demand my accounts, he has not the right to demand such private memoranda or accounts, as I keep with others, for my *own* satisfaction, and *from which* I prepare and complete His Excellency's accounts. It is impossible for the Court to know whether a copy or a draft is correct or not. If the Court wish it, I will produce the original at it's next sitting, if I have it. In the interim the copy can be used, subject to future comparison with the original.

Court closed.

Court decide to make use of the copy, subject to future comparison with original.

Q.—In which of these two accounts is Captain Jervis' travelling expenses.

A.—In the Commander-in-Chief's account.

Q.—Point out the item in which they are included?

A.—Bazaar expenses to 31st March 1866, Rs. 504-0-2.

Q.—Did Captain Jervis carefully examine the books in your charge, and the books you presented to him.

A.—Always.

Q.—When you presented the accounts, did Captain Jervis make any remark, or did he accept the accounts as correct.

A.—He accepted the accounts as correct.

Q.—Were they handed to him at the same time, or on different occasions?

A.—At the same time.

Q.—Subsequent to your and Captain Jervis' arrival from Calcutta, have any wines been returned to the Commander-in-Chief's stores by Captain Jervis?

A.—None.

Q.—When you left Calcutta did you pack up the household books of the Commander-in-Chief

A.—I did.

Q.—Can you state when they arrived at Simla?

A.—30th March: they were as follows: "Stock Book," "Wine Book," "Private Sundries" "Stable Book," "Furniture Book," also some other Books, one called the Ledger, the rest arrived some days after, by the country carts which came from Delhi. I cannot say the exact date, but they arrived before 20th April, as Captain Jervis passed a remark at the time, that the country carts had beaten the Bullock train.

The Court adjourned at 3.50 P. M., till 11 A. M., on Thursday, July 19th 1866.

XVIIth DAY'S PROCEEDINGS.

Court re-assembled at 11 AM., *on Thursday, July* 19*th* 1866.

The President produced a letter from the Adjutant General, in reply to the Court's letter of the previous day to his address.

Dated July 18*th* 1866.

FROM COLONEL H. E. LONGDEN,
Adjutant General.

To BRIGADIER GENERAL J. BRIND, C.B.,
Royal Artillery.
President General Court Martial.

SIR,

I have had the honor to receive and submit to the Commander-in-Chief your letter of this date, and am directed by His Excellency to remark that in his own opinion no exceptional course should be taken with regard to the proceedings of the Court of Enquiry, before which Captain Jervis H. M.'s 106th Foot, appeared, in the month of May last, which might be construed into a precedent hereafter, a change of procedure being involved, entailing serious consequences.

It may be said, that the essential quality of Courts of Enquiry, on questions affecting the character of Officers, is their absolute confidential nature.

It has been the Military practice not to absolve the proceedings of such Courts from that condition of confidence, except in the case of charges preferred against any Military person on account of evidence given before a Court of Enquiry, by himself, or in the case of statements by others, whose evidence it is desired to impeach.

There being no such ground, stated, for violating the confidential condition of the proceedings of the Court of Enquiry in question, His Excellency declines to give his sanction to the production of the papers asked for.

I have &c., &c.,
(Signed.) H. E. LONGDEN, COLONEL,
Adjutant General.

Examination in chief, of Abbey, Butler to Sir William Mansfield.—(*Continued.*)

Original of Abbey's account handed in by Prisoner at request of Court.

Q.—You have stated, that it was remarked the country carts had beaten the Indian Carrying Company's, state; when did the Carrying Company's carts arrive.

A.—The last lot with the 131 cases arrived on the 22nd April.

PRISONER.—Would the Court allow me to ask to what charge, the last few questions have reference? I submit that there being no charge in connection with that note of the 24th April, the evidence is wholly irrelevant.

PRSECUTOR.—They refer to two notes, which have been produced as evidence, and I submit that they have the closest possible connection with the Prisoner's general unwillingness to produce his accounts, the unwillingness being comprised on the 2nd and 3rd charges.

PRISONER.—The isolated fact of my having written a note to Lady Mansfield on 24th April, was introduced by His Excellency Sir William Mansfield, it has nothing whatever to do with any of the charges. I have, therefore, had no notice that any evidence on the point would be gone into, and the point itself, is, as I have already submitted, entirely unconnected with any of the charges.

I submit that there is no charge connected with my "*unwillingness*" to produce my accounts, and the Court has checked me from putting questions in cross-examination on that very point, which I was most anxious to explain by my questions.

The "unwillingness" to produce my accounts, is only mentioned in His Excellency Sir William Mansfield's deposition, not in the charge, which is "neglecting to obey an "order."

Q.—Wat was the contents of your letter to Mrs. Bain, and what answer did you get?

A.—Well, I cannot say the contents of my letter to Mrs. Bain, perhaps you will like to see the answer.

Answer read out.

Dated *Post mark Kalka, May.*

To E. ABBEY Esq.,

Butler to His Excellency,

Sir William Mansfield.

Dear Sir,

I don't remember supplying coolies &c., to you, if I did you have my Bill to show, by your sending me down your Bill, which you received from me, I would supply you with a fresh one, as I gave the bill in full.

Yours faithfully,

(Sd.) C BAIN.

Q.—Have you no recollection even of the substance of your letter to Mrs. Bain?

A.—Substance was asking for a duplicate bill, as the other was destroyed, I have not the slightest doubt but Mrs. Bain has my letter, and would be happy to give it up.

Q.—I have shown the Court that you stated before His Excellency Sir William Mansfield that, Mrs. Bain's Bill "was to come," and again" *when* I *get it*," without any mention or hint of your having *received one*, can you now explain why you withheld the fact of your having received and destroyed it?

A.—I cannot say or give any reason for it, at the time I may not have thought it necessary.

Q.—If you had written as you state to Mrs. Bain for a duplicate bill, because you had destroyed the first, is it conceivable that Mrs Bain should have written such an answer, be so good as to read the note to the Court once more?

A.—I'm sure I can't answer for Mrs. Bain's reasons for writing such an answer.

Q.—You say you brought refreshments "with you from Calcutta by my order." Will you state what they consisted of?

A.—*Yes, I will:* 2 Fowls, 2 Tongues, 6 Loaves of Bread, some Sauterne, some Claret, some Champagne, and 1 Dozen of Beer; also one maund of Ice, ordered by the Captain, to keep it cool on the road. I may also state, some Sherry, a bottle of Brandy, and some Soda Water.

Q.—Were the refreshments you have enumerated, for yourself, if not what portion was for your own consumption?

A.—The refreshments were both for myself and Captain Jervis. Captain Jervis himself, on leaving Howrah station, took his breakfast off the fowl and tongue, and drank a bottle of beer. He then put his head out of the window [Witness was here checked by the Court and told to be precise in his replies.] They were both for my own consumption and Captain Jervis' Captain Jervis did not tell me that. I can tell you what I made use of, I made use of the fowl, tongue, bread, and some of the beer. I also drank some of the Soda water: I may also say there was some tea and sugar a portion of which I made use of.

Q.—Did you continue eating these things during the whole journey, or up to what point?

A.—I continued eating these things to Delhi, when Captain Jervis ordered me some dinner at Delhi; but I did not get the dinner; after that I made use of some portion of those articles at Kurnaul. That was the last place.

Q.—Where did you get your dinner after Kurnal?

A.—I only had one dinner after Kurnaul, that was at Siree, that I paid twelve annas for.

Q.—From whom did you receive the money entered in the cash account produced by you from the 1st to 31st March?

A.—From Captain Jervis.

Q.—Why, in the heading of your copy of the account, did you leave out the word "petty."

A.—Well in first place, Sir, it was a petty cash account with Captain Jervis, but at the same time, it was really a cash account with me, as I received no money, only from Captain

Jervis; but at the same time that is not the reason I left it out, neither can I say why I omitted it, only that the one kept by myself was for my own information, not for any one else's, neither did I think when I presented Captain Jervis with that Petty Cash Account, that the copy would ever be called for.

Q.—Could anybody connected with His Excellency's household, and knowing that during the dates specified, in the Bazaar expenses book, you and I were travelling together, have any difficulty in understanding what these charges were that were entered in the Bazaar account?

A.—Captain Jervis would have no difficult whatsomeever; yes, I should think anybody would have a great deal of difficulty, as only myself and Captain Jervis knew what they were.

Q.—How were you able to remember that the country carts had arrived before the 20th April.

A.—As several of the Bullock Train carts with baggage had arrived before that date. I beg your pardon, excuse me a moment please, I haven't been well for a long time and I am very weak: yes, several of the bullock carts had arrived before 20th April, and Captain Jervis' remarked that the country carts had beaten the bullock train.

Q.—Did no boxes arrive after the date to which you have referred?

A.—The last boxes arrived, I think, on 22nd April.

Q.—When were you called upon, and by whom, to give your former deposition in regard to the matters to which you have deposed to day.

A.—I cannot mention the date by myself, I pointed them out *first and foremost*; they would never have been known, if it had not been for me.

Q.—To whom did you report the circumstance?

A.—Myself and Lady Mansfield were looking over the book, and I pointed them out.

Q.—When did this occur?

A.—I cannot tell you the date, Sir.

COURT.—State about what time, so near as you can recollect.

A.—I think, as near as possible, the commencement of April; wait a minute, Sir, please, about the commencement of May.

Q.—What took place after you had pointed out these things to Lady Mansfield.

A.—Some time after I was called upon to repeat what these items were in the presence of His Excellency Sir William Mansfield, and, I think, Major Flood, it could not have been more than two days afterwards.

Q.—Who called upon you to do this?

A.—His Excellency Sir William Mansfield!!

Q.—Relate as far as you can remember, as exactly as you can, what you were called upon to do?

A.—To explain what those expenses were.

Re-examination by prosecutor.

Q.—You were asked whether there was any book besides the Bazaar Book, in which you could enter the travelling expenses: was it usual to enter anything but Bazaar expenses in the Bazaar book?

A.—No.

Q.—Have you ever entered anything in this book besides these travelling expenses.

A.—No.

Q.—If you had not been ordered by Captain Jervis to enter his expenses in the Bazaar Book, where would you have charged them?

A.—In the private sundry book.

Court adjourned at 3. 50. P. M. till Friday, 20th July, at 11 A. M.

XVIIIth DAY'S PROCEEDINGS.

Court re-assembled at 11 A.M., *on Friday* 20*th July* 1866.

Edward Abbey re-appears before the Court, and standing up with a paper in his hand, thus addressed it.

WITNESS.—Beg pardon, Gentlemen, but would you allow me to read certain papers I have here.

COURT.—What are they?

WITNESS.—It is about the first question put to me yesterday, and answered by me.

COURT.—Specify the question and answer, and you can add to it, or alter it.

WITNESS.—This is not exactly an address, Gentlemen, but I have got such a bad memory, I can't remember what I want to say. When the question was put to me yesterday, I understood that it was when paying the Commander-in-Chief's Bills, that I had asked for a receipt for my own, as a sort of discount allowed by tradesmen to the party who pays the Bill, or the party who contracts it. If there is any other meaning, will Capting Jervis kindly explain it? [a pause.]

Gentlemen, there is a meaning in it, I found it all out last night, would you allow me to explain it?

COURT.—Does it relate to the question, before the Court?

WITNESS.—Yes, it is on that question, I did not see the drift of the Capting's question, until it was remarked last night that I had told an untruth.

Court closed.

Court order that the witness may be allowed simply to state what other interpretation can be put on the question, and then give his reply.

WITNESS.—I might, yes! I might! when paying the Commander-in-Chief's Bill have asked for a receipt for my own, but have asked for it many times before, even before I knew Sir William Mansfield had a bill at that place.

Here the Court interfered, and requested witness would fix any other interpretation that the question could bear and then explain.

WITNESS.—I might have done so, I am no scholar, never having been at college, if the Court would allow me to explain my own way, then I could explain.

COURT.—Think, and try to state, what other interpretation could be put on that question.

WITNESS.—Yes, but I was so annoyed and upset on hearing that I told an untruth [a pause] No, it's very likely, that I might have asked for a receipt but I have done so before, when I have been going to the shop. During some time last year, the Mess of the 101st contracted a bill with Messrs. Anderson and Co., at Simla, it is well known that these establishments allow a Mess Sergeant some small discount, and I have several times asked for my bill to be receipted on that account, and, believe me, this is the truth, and I would have answered the question yesterday in the same manner, had I understood the question. Believe me, I would'nt tell a lie, at any time, but *particly* before this Court.

Prisoner declines to cross-examine.

COURT.—You have stated that you unpacked the books in Captain Jervis' presence on 22nd April. Did you unpack the book called the "Ledger." Is this it? (Book 3 in the list.)

A.—No, it is a large book, with "Ledger," marked on it, on this side or on the back, I can't say which. The Ledger was there when I unpacked the Books.

Q.—Do you know what has become of the Ledger?

A.—No, it was taken to Captain Jervis' quarters.

PRISONER.—If the Court would like to see the "Ledger," I shall be happy to show it, at its next sitting.

Q.—Where did you get the wines &c., that you say you brought up as refreshments?

A.—Out of the Commander-in-Chief's cellar.

Q.—Was there any surplus of these wines on arrival at Simla, if so, what became of such surplus?

A.—I think there was some beer and brandy, but no wine, whatever there was, was put back into store.

Court's examination closed.

Major T. E. Gordon, was re-called, and cross-examined by the Prisoner on his former oath.

Q.—Have you ever seen the original bills sent in by Mackenzie, Lyall, and Co.?

A.—I consider that bill, brought into Court by me, the original bill as far as I know.

PRISONER.—Will the Court allow me to look at the bill?

The following letter accompanying the bill was read out.

The Exchange, Calcutta 11th June, 1866.

TO MAJOR T. E. GORDON, A.D.C.
to His Excellency the Commander-in-Chief,
Simla.

Sir,

As requested in your letter of 5th instant, we have now the pleasure to wait on you with a copy of our account with His Excellency the Commander-in-Chief, including the bills for goods purchased by Captain Jervis, which, on examination we hope you will find correct, and soliciting a remittance of Rs. 1,350-12-0.

We remain, Sir, &c.,

(Signed.) MACKENZIE, LYALL, & Co.

Q.—This very bill you referred to, quotes three former bills, rendered on different dates, how then can it be the original bill?

A.—I said as far as my knowledge of the bill goes.

Q.—Did you write for the corrected bill, and who told you to do so, and when did you write?

A.—I showed the first bill to His Excellency Sir William Mansfield, and he remarked these items referred to the question asked me by the Prisoner, the details of which were not known: accordingly I wrote for these bills, the date I think is given in the reply to my reference.

Q.—What was the substance of your letter to Mackenzie, Lyall, and Co.,?

A,—The first letter was simply asking for an account, as far as I can recollect. I have stated that before.

Q.—Does the statement made by Mackenzie, Lyall, and Co., that the bill "included the purchases made by Captain Jervis," refer to anything you had stated to them in your letter?

A.—Nothing.

Q.—What bill do you refer to when you say you showed the "original bill" to His Excellency?

A.—The first bill, there are two bills before the Court.

Q.—Why do call that an "original bill" when it clearly is not so; will you look at it again and say whether it is or can be called an original bill?

A.—I never saw any other bill, therefore I consider this an original bill, to me, in my charge.

Q.—Do you see an item of two air-cushions erased, do you know when and by whom this was done?

A.—I know nothing about it.

Q.—Do you know for whom those air-cushions were bought?

A.—No.

Q.—Supposing I had wished to affect a recovery of horse-gear taken by me, could I have done so until the bill was received from Calcutta?

A.—I fancy not, unless the Prisoner had a memo: of the articles he took for himself.

Q.—How would such a memo: show the price?

A.—Well, I generally find the price of the things myself, when I purchase. Captain Jervis might have done the same.

Cross examination closed.

COURT.—Did you take over a debt of Rs. 1,000, due, as you say, at Bombay for a horse purchased, and for whom was it purchased?

A.—I merely took over the report, I mentioned it to the Commander-in-Chief, who said he was aware of a horse having been purchased in Bombay, but it was one of his own, which had been sold, and afterwards re-purchased, as the bill for the same has been received; the price was somewhat under Rs. 1,000.

Q.—What made you think that Monteath's bill contained articles purchased by other members of the Staff: was it customary to charge to the Commander-in-Chief's accounts, things purchased by the Staff.

A.—Because, on enquiring as to the amount of the things, stable equipment, &c., mentioned in the bill, the whole of them, could not be accounted for in Sir William Mansfield's stable. And, moreover, the Duffadar told me that some of them had been used by Captain Jervis. I, also, in examining the horse clothing, saw that 8 sets arrived, of which 6 were told me by the Duffadar to belong to Sir William Mansfield. There were 8 sets charged for in the Bill, 5 warm and 3 cool sets, which exactly corresponded with the sets which arrived in the boxes. I am not aware of the custom.

Q.—How do you account for Captain Jervis' purchases being included in Mackenzie, Lyall's bill?

A.—I am not aware that any of Captain Jervis' are entered. Captain Jervis' purchases are, as far as I am aware of, those of February 20th 1866. I recollect that on the day of the sale of Mr. Bullen's furniture at Alipore, and the catalogue of the sale being in Captain Jervis', or the Commander-in-Chief's, possession, at the Treasury Gate, when His Excellency remarked that it would be a good opportunity to purchase some furniture for his quarters, there, Captain Jervis' was requested by His Excellency to go to the sale and purchase what he required.

Q.—Do you know whether any of the articles in Mackenzie, Lyall's, bill contain of their persons' purchases besides those of Sir William Mansfield.

A.—I don't know.

BEKAREE, CHUPRASSI, SWORN AND EXAMINED.

Q.—How long have you been with Sir William Mansfield, and in what capacity?

A.—I am a chuprasee, and am in His Excellency's service.

Q.—Did you come up from Delhie in charge of the carts with the Commander-in-Chief's baggage this year?

A.—Yes.

Q.—When did you leave Delhi, and when did you arrive at Simla?

A.—I left Delhi on the 31st March, and arrived at Simla on the 16th April.

Q.—How long after your arrival at Simla, were the carts dimissed?

A.—The day I arrived, namely on the 16th April, the carts were unpacked, and they left on the following day.

Prosecutor's examination is closed.

Prisoner declines to cross-examine.

COLONEL D. M. STEWART, DEPUTY ADJUTANT GENERAL OF THE ARMY, IS DULY SWORN.

Q.—Where you President of a Court of Enquiry, which re assembled on the 14th May last.?

A.—Yes, I think that was the date.

Q.—Do you know if the Prisoner was directed to bring to the Court, His Excellency Sir William Mansfield's accounts, books, papers, &c., and is that the letter directing the same?

A.—Yes, this is a copy, written by the Adjutant General.

Q.—Did the Prisoner comply with the order, and state what occured at the Court of Enquiry?

A.—Captain Jervis' came to the Court of Enquiry without any books in the first instance, but after some discussion he went back to his quarters and returned with a book.

Q.—Is this the book Captain Jervis brought (book marked No. 3)?

A.—Yes, this is the book.

Q.—Did Captian Jervis bring any vouchers or papers? and did he give any account for other papers, books, &c.,?

A.—He brought no papers, and he accounted for the absence of the other account books, stating that they had not been made up, that they were all in confusion, and mixed up with his own accounts.

Q.—Was the Prisoner made acquainted with the matters which the Court was decided to investigate?

A.—Of course he was; statements with regard to which the Court was required to give an opinion were made in his presence, so long as he remained in the Court.

Q.—Was this the statement you referred to?

A.—Yes, this is the statement.

STATEMENT DRAWN UP BY SIR WILLIAM MANSFIELD, READ BEFORE THE COURT OF ENQUIRY ON 14TH MAY, 1866.

"Since the Court assembled last, certain matters have transpired, which expose Captain Jervis' conduct to the greatest misconstruction: so fatal is the matter to that Officer's character for integrity, if proved, that His Excellency has not ventured to put it in the form of a charge. He leaves it to this Court to decide on the nature of the matter, and to record its opinion accordingly. I shall call certain native witnesses, and Captain the Hon'ble W. Harbord, to prove that when Captain Jervis was residing on his own account at Mahasoo, last year, and giving entertainments, the supplies came entirely from the Commander-in-Chief's cellars and store-rooms, the same being without His Excellency's sanction.

"It further appears that His Excellency's Khansamah, without any sanction from the Commander-in-Chief, was employed to furnish Captain Jervis' table, and that the expense so incurred was included in His Excellency's Bill. Captain Harbord paid Captain Jervis Rs. 220 for his share of the expenses on the occasion.

"If Captain Jervis' Ledger, which now is in his possession, shews a large money recovery on the several accounts, for the benefit of His Excellency, I am to say that the fatal want of proper method in business, has of necessity exposed his conduct to a dreadful misconstruction. But if on the other hand, there is no such recovery of money shewn, I must leave it to the Court to charactise the transactions referred to.

"On the Books being produced and examined, the Court will be able to say, whether, in the instance above mentioned, Captain Jervis has been guilty of a fatal imprudence, and want of method in business, leading to the misconstruction alluded to, or of dishonesty.

"I have now to draw the attention of the Court to another point, viz.,—That I propose to submit proof, that on the occasion of his recent journey from Calcutta, Captain Jervis caused his travelling expenses to be charged to the Commander-in-Chief without authority, and for the purpose of concealing such charge, caused it to be entered in the book as Bazaar expenses, a criminal breach of trust, being thus established.

"It is further proposed to show, that this Officer availed himself of the Commander-in-Chief's wine, and put His Excellency to other expense, without authority, when on the said journey this also amounting to Breach of Trust.

(Signed.) "T. E. GORDON,

Brevet Major."

PRISONER.—May I ask whether that is an original document.

DEPUTY JUDGE ADVOCATE.—Yes, it is an original.

Q.—You have stated that Captain Jervis heard the statement as long as he remained in the Court: at what stage did he leave, and under what circumstances?

A.—As far as I recollect, he left immediately after the reading of the statement by Major Gordon: he stated that he could not remain in the Court, to be called a thief. I think those were the words. He stated that he was not well, and that he would produce a Medical Certificate of unfitness to remain in Court. I, at the same time, suggested to him, that it would be for his own advantage to wait and hear all the evidence brought against him, but he would not act on the suggestion, and left the Court.

Q.—Were you directed to place the Prisoner in arrest, if so when, and state what occured?

A.—I was instructed by Sir William Mansfield to place Captain Jervis in arrest, I did so; but I forget the date. I went to Captain Jervis' quarters, accompanied by Majors Flood and Gordon, and there read out to Captain Jervis a Memo: by Sir W. Mansfield.

Q.—Is this the Memo: you read out?

MEMORANDUM BY THE COMMANDER-IN-CHIEF.

After seeing the Finding of the Court on the proceedings attributed to Captain Jervis, first in the direct charges which were preferred, and secondly in the still graver matter adduced on the 14th of May 1866, no choice is left to the Commander-in-Chief.

2. Captain Jervis has declined to afford any sufficient explanation with regard to the charges preferred in Court, and he has offered no defence against the matter alleged by Major Gordon this day (14th May 1866.)

3. Captain Jervis is therefore placed in arrest on the matter of the first charges; secondly, with respect to the alleged breach of trust, as conduct unworthy of an Officer and Gentleman; and thirdly, for direct disobedience of Military orders conveyed to him by the Adjutant General, to bring the Commander-in-Chief's account books, papers, &c., to the Court of Enquiry, which sat on the 14th day of May 1866.

4. His Excellency reserves to himself the right of preferring charges against Captain Jervis with regard to the criminality of this breach of trust, according to the sense of the Criminal Code as His Excellency may be advised by the Judge Advocate General; while every opportunity will be afforded him of removing that character from the breach of trust if possible.

5. He now again receives the Military order of His Excellency to surrender all books, papers, letters, bills, and receipts, which purport to have regard to His Excellency's Accounts.

6. He, being under arrest, will daily attend at the Military Secretary's Office, for the purpose of assisting the Military Secretary, Major Gordon, and an Officer to be named by the Adjutant General from his department, in unravelling the Accounts, and to make a real and honorable attempt to relieve himself, Captain Jervis, from the frightful imputations under which he now labours.

7. Every opportunity will thus be afforded to him of righting himself if possible.

8. The three Officers as above alluded to will thus sit as a Committee, and will report for information of the Commander-in-Chief as soon as possible.

(Signed.) W. R. MANSFIELD, GENERAL,
Commander-in-Chief in India.

HEAD QUARTERS,
Simla, 14th May 1866.

ADJUTANT GENERAL'S OFFICE,
HEAD QUARTERS, SIMLA,
15th May, 1866.

Forwarded to Captain Jervis, by order of His Excellency the Commander-in-Chief.

H. E. LONGDEN, COLONEL,
Adjutant General.

CAPTAIN JERVIS,
HER MAJESTY'S 106TH FOOT,
Simla.

Q.—After reading that memo: did anything further occur?

A.—Yes, I was instructed by Sir William Mansfield after reading that memo: to tell Captain Jervis that if he did not now submit to His Excellency's orders, he would be obliged to send him to a Military Station, for the purpose of undergoing trial, and I also on my own account, urged Captain Jervis to meet the Commander-in-Chief's wishes, and before I left, I understood that Captain Jervis intended to do so. The other officers who were with me, advised him in the same sense; I cannot recollect the exact words they used.

Q.—Did you demand the Prisoner's sword, on placing him under arrest?

A.—No.

Q.—Did you repair this omission on any subsequent date.

A.—Yes, on the 9th June, I went personally to Captain Jervis' quarters, for the purpose of demanding his sword, having failed previously in getting it privately from him: when Captain Jervis appeared, I communicated to him the object of my visit, I asked him for his sword, which he refused to give up. Captain Jervis stated at the time that he was not aware that he was required by law to give up his property, and after some words, he called on Major Innes to come and witness what passed between us: after Major Innes appeared, I repeated my demand, Captain Jervis still declined to give up his sword, or rather his property as he called it.

Q.—Was there a sitting of the Court of Enquiry, after the 14th May?

A.—I think not, I don't recollect.

Q.—Are you aware if any correspondence has taken place between the Adjutant General and the Prisoner, subsequent to his being warned for trial?

A.—Yes, I believe some correspondence took place.

Q.—Is this the correspondence?

A.—Yes.

(THE FOLLOWING CORRESPONDENCE WAS READ OUT.)

From Captain Jervis to Colonel Longden A. G. 19th June 1866.

Reply from Colonel Longden, A. G., to Captain Jervis, 21st June 1866.

From Captain Jervis, to Colonel Longden, A. G., 22nd June 1866.

Reply from Colonel Longden, A. G., to Captain Jervis, 23rd.

From Colonel Longden, A. G., to Captain Jervis, 24th June 1866.

19*th June*, 1866.

SIR,

I have the honor to acknowledge th e receipt of your letter, 15th instant, informing me that a General Court Martial has been ordered to try me on the charges therein specified; and directing me to send in a list of witnesses whom I may propose to call.

I now have the honor to inform you, in reply, that the principal witnesses whom it will be indispensible for me to examine, are

Colonel Kirby, late Military Secretary to Sir W. Mansfield, K.C.B., K.S.I.

Lieut.-Col. Evans, late Persian Interpreter, to Sir W. Mansfield, K.C.B., K.S.I.

Colonel Crealock, Military Attaché to the Embassy at St. Petersburgh. late Assistant Adjutant General to Sir W. Mansfield, K.C B., K.S.I.

Sir A. Stirling, K.C.B., late Military Secretary to the late Lord Clyde, G.C.B.

Brevet Major O. T. Burne, Aide-de-Camp to Sir H. Rose, G.C.B., K.S.I.

Captain Crealock, 95th Foot, late Aide-de-Camp, to Sir W. Mansfield, K.C.B., K.S.I.

Captain Murray, late Aide-de-Camp to Sir W. Mansfield, K.C.B., K.S.I.

Shreerischna Wassadew, Clerk, Commander-in-Chief's Office, Bombay.

Atmaram Bapoojee, Clerk, Commander-in-Chief's Office, Bombay.

Eduljee Dorabjee, Parsee of Bombay.

Jamsetjee, ditto.

As some of these witnesses are in and others in Bombay Europe, there must necessarily be a considerable delay before they can attend.

It is my intention, during the interval, to submit a formal protest against His Excellency's proceedings, to His Royal Highness the Commander-in-Chief of Her Majesty's Forces, and to Lord Hartington, on the grounds, that His Excellency Sir William Mansfield, is exceeding his powers, by convening a General Court Martial on matters purely personal, and in which his own pecuniary interests, and nothing further, are involved.

Should this protest not lead to a prohibition of the Court Martial altogether, I shall be able to establish by the evidence of the witnesses named above, that the accounts of Sir William Mansfield's private expenditure have for years been kept on a system which renders it impossible or any charges to be brought against me on unclosed accounts or imperfect memoranda, as has, now been done. And secondly, that His Excellency, himself, has been for several years past guilty of the very acts, which His Excellency has imputed to me as my gravest offence, which His Excellency, even in the letter under acknowledgement, declares to be an offence for which I deserve dismissal from the service, viz., the disposing of his private property, viz., joints of mutton, beer in pints and quarts, &c., to private individuals, and receiving payment for the same.

It is difficult for me to say at the present moment, what other witnesses may be necessary, but I would wish to reserve to myself, the option of calling others on subsidiary points hereafter.

(Sd.) SCOTT JERVIS, *Captain*
106*th Light Infantry.*

To
COLONEL LONGDEN, C. B.,
Adjutant General.

ADJUTANT GENERAL'S OFFICE,
HEAD QUARTERS, SIMLA.
21*st June*, 1866.

SIR,

The Commander-in-Chief is advised that the summoning of the witnesses mentioned in your letter dated the 19th instant, can only be intended for the defeat of justice in your own favor. You are charged with scandalous conduct within certain dates, viz., from September 1865, to April 1866, and for disobedience of orders in various instances during the months of May and June 1866. It is evident from the nature of things, that none of the witnesses named in your letter can speak to occurrences on those dates, with the exception, perhaps, of Captain Christie.

2. That Officer's attendance, however, cannot, with reference to paragraph 38, Section XXI, Bengal Military Regulations, and the invariable rulings in such a case as this, be ordered, unless you are prepared to pay his expenses beforehand.

3. It will, however, be competent for the Court Martial to determine, whether Captain Christie's evidence is necessary or material, as regards the charges brought against you.

4. I am further permitted to inform you, that no means exist for the legal summons of any witnesses out of Bengal, for the purpose of giving evidence before a Court Martial.

I have the honor to be,
Sir,
Your most obedient, humble servant,
H. E. LONGDEN, *Colonel*,
Adjutant General.

CAPTAIN E. S. JERVIS,
H. M. 106TH FOOT,
Simla.

SIMLA, 22*nd June* 1866.

SIR,

I have the honor to acknowledge the receipt of your letter of yesterday, informing me that the Court Martial before which His Excellency the Commander-in-Chief wishes to arraign me will assemble on Monday next at the Assembly Rooms, without summoning my witnesses, who His Excellency says, have been named by me, for the purpose of defeating justice.

In reply I have the honor, most solemnly and emphatically, to protest against this proceeding, as unwarranted by law, principle, or justice, and to state, with every respect to His Excellency, that nothing short of physical force will induce me to be present at the Court, and that

if dragged there, as a prisoner, by violent means, I shall take no part in the proceedings, save to reiterate before the Court, my protest against the illegality and injustice to which I have been subject, and warn every member of the grave responsibility they are incurring, by consenting to take part in the proceedings.

I must take this opportunity of reminding His Excellency Sir William Mansfield, that, he is, in this case, a private as much as a public prosecutor; that in prosecuting me for imaginary injuries to himself, in connection with his wine, and stores, and horses' clothing, he is directly seeking his own pecuniary interests; and that it is a thing altogether unheard of, that a Plaintiff should take upon himself to hurry on a trial, in which his own personal and private interests are concerned, and assume to himself the power of pronouncing upon the necessity of summoning the, witnesses whom the Defendant considers necessary to establish his innocence.

I take the same opportunity of again declaring, that I consider the witnesses named, essential to my defence: that I shall be able to shew by their evidence, that the accounts of Sir William Mansfields's household expenditure, have been kept on a system, which renders it absolutely impossible that, till my accounts are closed, *any* charge *can* be preferred against me with the slightest show of reason, either as regards supposed deficiency of stores, or mis-apropriation, as it is only when these accounts are *closed*, that articles taken, lent, or used, have ever been accounted for or their value recovered from the parties who have had them. To deprive me of the means of obtaining this evidence, and force me before the Court without it, is simply to crush me, not by legal trial, but my tyranny; and here I think it right, also, to state, unreservedly, that I regard the whole of the Military action which has been taken against me in this matter, including my arrest, as altogether illegal.

In conclusion, and to prevent all possibility of misunderstanding, I would observe that it is from no desire to evade enquiry, that I now refuse to attend the Court Martial, except upon compulsion. I have already lodged a suit for Rupees 2,500, due to me on the general account and summoned Sir William Mansfield to produce all the papers that are in his possession; and directly they are available, it is my purpose to have the whole account drawn out by a professional accountant, and published to the world.

I have *&c.*,

(Sd.) SCOTT JERVIS, *Captain*,

106*th Light Infantry.*

COURTS MARTIAL.

ADJUTANT GENERAL'S OFFICE,

HEAD QUARTERS, SIMLA,

23*rd June* 1866.

SIR,

In answer to your letter dated Simla 22nd June 1866, I am to inform you, that you are placed in close arrest, and cannot leave your domicile, without special permission.

2. An Officer will attend on Monday moring next, at half past ten o'clock, to conduct you to the Court Martial. Should you refuse to obey the command thus now communicated to you to appear before the Court Martial, a guard will be sent to enforce the order for your attendance.

I have the honor to be,

Sir,

Your most obedient, humble servant,

H. E. LONGDEN, *Colonel*,

Adjutant General.

CAPTAIN JERVIS,
H. M. 106th FOOT,
Simla.

COURT MARTIAL.

ADJUTANT GENERAL'S OFFICE,

Head Quarters Simla, 24th June, 1866.

Sir,

I have it in command to forward to you the enclosed additional charge, which will be brought against you at the General Court Martial before which you have been ordered to be arraigned.

2. I am further directed to transmit for your information, an extract of a letter from the Judge Advocate General to my address, dated the 23rd June 1866.

EXTRACT.

"Captain Jervis may possibly have misunderstood the Adjutant General's letter to which he "replied, and he is apparently under an erroneous impression that His Excellency finally decided "as to his witnesses. It will be as well, therefore, I think, to explain to Captain Jervis now, "that in the case of distant witnesses, whose summons is not obviously essential, it is for the "Court, and not for the prisoner himself, or any other individual, to decide authoratively as to "their materiality; that he has named witnesses who, apart from their inacessibility, are cer- "tainly, primâ facie, not essential to his case: that, therefore, the assembly of the Court cannot be "deferred on their account; that however material or accessible witnesses may be, they cannot "be required before a defence commences; and that when his trial reaches that stage, he can "make any statement he chooses regarding his witnesses, to the Court; whereupon the Court, on "due reason shewn, will decide whether they are not material and necessary, and will shape its "own procedure accordingly, giving him the full benefit, in all probability, of any doubt which "may arise owing to the absence of any unattainable evidence."

I have the honor to be,

Sir,

Your most obedient humble servant,

(Sd.) E. LONGDEN, *Colonel,*

Adjutant General.

CAPTAIN JERVIS,
H. M. 106th Regt. Simla.

ADDITIONAL CHARGE.

Fifth charge.—With conduct unbecoming the character of an Officer, and to the prejudice of good order and Military discipline, in having, at Simla, on the 22nd June 1866, in a letter of that date, written and sent by him, to the address of Colonel Longden, C.B., Adjutant General, made use of the following highly insubordinate expressions, in regard to the orders of His Excellency the Commander-in-Chief, for his, Captain Jervis' appearance before a General Court Martial.

"In reply, I have the honor, most solemnly, and emphatically, to protest against this por- "ceeding as unwarranted by law, principle, or justice, and to state, with every respect to His "Excellency, that nothing short of physical force will induce me to be present at the Court, and "that if dragged there as a prisoner by violent means, I shall take no part in the proceedings, "save to reiterate before the Court, my protest against the illegality and injustice to which I have "been subject, and warn every member of the grave responsibility he incurs by consenting to "take part in the proceedings."

By order of His Excellency the Commander-in-Chief.

H. E. LONGDEN, COLONEL,

Adjutant General,

ADJUTANT GENERAL'S OFFICE,
Head Quarters, Simla, 24th June 1866.

PROSECUTOR'S EXAMINATION CLOSED.

Cross-examination by Prisoner.

Q.—Under what circumstances was the Court of Enquiry assembled on the 14th May?

A.—It was by order of the Commander-in-Chief, to investigate some fresh evidence to be produced by Major Gordon.

Q.—How was the order communicated, and have you the letter or order?

A.—I am quite unable to answer that question, without the proceedings (Proceedings were handed to the witness,) there is nothing to show here. I have got no letter or order. I presume I received orders personally, or by letter, I have no doubt that the Adjutant General could produce them, I cannot say if there was one.

PRISONER.—May I ask the Court to direct the production of that order? It is absolutely necessary for my vindication and defence to elicit all the circumstances, connected with the previous proceedings, I cannot defend myself unless I do. If the prosecutor and Witness are allowed to see the proceedings, how are they privileged any longer?

PROSECUTOR.—That order for the assembly of the Court, forms part of the proceedings, and is confidential, and not available for evidence before the Court.

Q.—Can you not state, how you received the order to attend yourself?

A.—I received the order from the Adjutant General, either verbal or in writing, I forget which: probably verbally, as we sit in the same room.

PRISONER.—I submit that the mere order to assemble cannot fairly or equitably be considered a privileged proceeding: it is connected with a highly important circumstance in the case, and it will be an injury to me, if it is not produced. I further submit that if the order did form part of the proceedings, it would be with the proceedings which it is *not*.

Q.—As President of the Court of Enquiry, can you state positively that the order referred to or formed part of the proceedings?

A.—I am unable to say, as I said before, whether the order I received was a verbal or written order: there may be something in the Adjutant General's Office to say whether the order was verbal or written. Under the circumstances, I cannot say. It does not appear to be among the papers. At the same time I may add, that I am not sure that copy is complete.

Court closed.

Court orders the witness to produce the order or letter.

PROSECUTOR.—On looking over the correspondence, I find it was a General Order. There was no letter.

General Order read out.

Dated 14*th May*, 1866 *Head Quarters.*

Q.—When did you receive that order and where?

A.—I am unable to say whether I received it at Office, or at my own house, before I went to Office.

Q.—How often had the Court sat, before the 14th and on what dates?

PROSECUTOR.—I submit that has nothing to do with the question under trial.

A.—May I look at the proceedings (proceedings handed to witness.) The Court appears to have sat three times, once on the 10th, once on the 11th and once on the 14th.

PRISONER.—If proceedings or letters are withheld, they should be withheld altogether; their production in support of the prosecution or in aid of the memory of the witness, destroys the privilege, and places the accused at a disadvantage. Having been made use of by the prosecutor and witness for their purposes, it would, I submit, be an injustice to withhold them from me, and I would request the question in this new phase may again be submitted to the Commander-in-Chief, if the Court think it beyond their competency to decide.

If His Excellency the Commander-in-Chief had not convened this Court, and if the prosecution had not been conducted on his behalf, such an anomaly could scarcely have arisen as "privileged proceedings" being handed over to the prosecutor, and withheld from the prisoner. His Excellency on reference being made, would have forbidden their production altogether.

Court adjourned at 4-55, till 11 A.M., on Monday 23rd July 1866.

XIXTH DAY'S PROCEEDINGS.

Court re-assembled at 11 A.M., *on Monday, July* 23*rd*, 1866.

Cross-examination of Colonel D. M. Stewart,—(*continued.*)

PROSECUTOR.—With respect to the previous arguments that the witness and Prosecutor having seen the Proceedings of the Court of Enquiry, the confidential character of these documents has been destroyed.

I beg to reply that the Prosecutor at a General Court Martial is invariably furnished with these papers for the purposes of his case, and witness was himself President of the Court of Enquiry and both witness and Prosecutor are Staff Officers of the Department which is charged with the custody of the confidential document. With regard to the statement that the paper has been placed in the witness' hand for his own purposes, the Court will remember that they were handed to him to enable him to reply to a question put by the prisoner in cross-examination, it may be presumed with a view to benefit himself, the same question having been objected to by Prosecutor and allowed by the Court.

PRISONER.—I beg respectfully to submit the objection urged by the Prosecutor is really no objection at all. It is necessary for the defence of my character, now under heavy imputations, that these proceedings should be produced. By them alone can I justify myself, and I submit that having been publicly used in this Court, they have lost the private character, which they once had, and have become to all intents and purposes, the property of the Court, I therefore earnestly and respectfully beg the Court to require their production.

Court closed

Court decided to adhere to the opinion of the Deputy Judge Advocate, and disallow the production of the proceedings or a second reference to His Excellency the Commander-in-Chief for their production. The following is the Deputy Judge Advocate's opinion.

DEPUTY JUDGE ADVOCATE.—I submit there is nothing anomalous in these Proceedings to affect the orders which the Court may pass on the recommendation they may make relative to the Proceedings of the Court of Enquiry.

In all cases of trials of Officers, and in intricate cases affecting soldiers, the preliminary investigation is made by a Court of Enquiry. These Proceedings though confidential are invariably entrusted to the Deputy Judge Advocate; they are available to the Prosecutor for the purpose of informing him of the matters under Enquiry, the previous statements made by any witness are placed at the disposal of the prisoner, that he may take notice of any discrepancies; and in the event of any statements before the Court of Enquiry becoming a point at issue, before the Court Martial, those statements are made known to the Court.

This course has been followed in the present instance. The statements of witness have been perused by the Prisoner, and that of Abbey has been made use of, for the purpose of his cross-examination. Likewise on the part of the Prosecutor, the statements read by Major Gordon before the Court of Enquiry of the 14th May, became a matter of issue before this Court, because it was necessary to prove, that the prisoner had been made acquainted with the matters which the Court had been re-assembled to investigate. That statement had accordingly been recorded on the Proceedings of this Court. Thus the entire Proceedings of the Court of Enquiry of 14th May with exception of its Finding have been made known to the prisoner. The Court have had sufficient information regarding the Court of Enquiry, to be aware that the matters submitted to it on the 10th and 11th May have not been included in the charges submitted to the present investigation, and nothing has yet been stated to explain to this Court, how anything which occurred on those days can be matter at issue before them.

The prisoner has stated that it will become so; but until such has actually happened, I submit that the Court have no grounds upon which they can take action, upon prisoner's application. As far as regards the prisoner's right to examine any document with which a witness has refreshed his memory, I would observe that the witness requested the Prosecutor to look for an order asked for by the prisoner, which was not on the records, and was found elsewhere; and again to inform the prisoner of the dates on which the Court sat previous to the 14th May, these dates being shown by the headings of each day's proceedings; if it is of importance to the prisoner

to test the accuracy with which these dates have been stated by witness, he may, in my opinion, be permitted, without objection by the Court, to inspect those headings.

It is clear that theCourt will not allow a question to be put to cause a disclosure indirectly of any portion of the proceedings, of which they will not directly order the actual production.

PROSECUTOR.—Before the cross-examination of the witness is proceeded with, I would beg to be allowed to draw the attention of the Court to the following statements, Memo: and letter, which have appeared in the Report of the 14th Day's Proceedings in the "*Pioneer*" newspaper dated 20th July, and of which I have no recollection. I shall feel much obliged, if the Court will inform me, if they form part of its proceedings.

The Court will there perceive that an attack has been made on one of the witnesses for the Prosecution, under cover of the name of the Court, but without its sanction or authority, I therefore pray the Court will take such steps as may appear desirable to them to counteract the affects of this insidious action.

PRISONER.—I beg to submit that I am in no way answerable for all that appears in the "*Pioneer*," I did, however, pass on the extract to the Editor of that paper, because it had been read in Court. It was not for me to know whether it formed part of the proceedings, as the Court was closed at the time. I did not understand the Court to say that it was refused.

To which Mr. G. W. Allen, the principal Proprietor of the "Pioneer, replied:—

The system observed in preparing the Reports for the Press, is as follows:—The Reporter of the *Pioneer* takes his notes, and from them compiles his account of the Proceedings at the end of the day. The account is then compared with the particulars taken down by Captain Jervis and by Captain Jervis sent to me. In the instance under notice by the Court, the memorandum objected to by the Court was sent to me by Captain Jervis as *part of* the day's proceedings, and I had no idea but that it was really such. It has been a subject of general remark I think, that the Reports hitherto published by the *Pioneer* have been very fair and very correct, considering the difficulties under which they are compiled.

Court closed.—Court decided that they do not admit the statements as accurate. The statement was rejected and the prisoner stated he would reserve it until his defence. The Court therefore express their grave displeasure at the prisoner's conduct.

The Court at this stage of the Proceedings, prohibited the prisoner submitting any further remarks on the subject lately under discussion, and the cross-examination of Colonel D. M. Stewart 13th witness, was proceeded with.

Q.—You stated in your evidence that I produced no accounts at first before the Court, and afterwards only a single Book. Did I not state that my reason for producing no accounts at first, was that they had not been quite prepared, and did I not express my readiness to fetch the one Book that was ready.

A.—Captain Jervis did express his readiness to bring the Book, and I understood him to say that he was unable to produce his accounts owing to their being in confusion and mixed up with his own.

Q.—Did I not at the same time offer to produce the accounts, if the Court would give me time?

A.—I am quite unable to say, whether he did or did not.

On the next question. The President remarked that it was not a fair one.

PRISONER.—Will the Court allow the question to be recorded?

After the examination of one Book which I produced, and after hearing my explanations about my accounts generally, were you then disposed to attribute any criminality to me?

Court closed.—Court disallow the question.

Q.—Did you not after the close of the second Day's Proceedings of the Court of Enquiry, speak encouragingly to me regarding my vindication?

A.—Thinking Captain Jervis was pursuing a very unwise course with regard to the matters under investigation, I followed him out of the Court, and offered him some advice, which I thought he felt at the time disposed to take: I recommended him to give a fair explanation, on all the points demanded by the Commander-in-Chief, as I thought he was doing himself much harm, by ignoring the enquiry altogether. I would add that he gave as a reason for refusing to explain matters, that he had not been treated in a proper manner;

and I believe I replied to this, that after he had given a complete and full explanation, the Commander-in-Chief would of course make amends, if he had thought he had been harsh or unjust to him,—some such phrase as that I made use of.

Q.—Between the date of your giving me that advice, and the date of the charges suddenly brought against me by Sir W. Mansfield, had there been sufficient time for me to follow your advice?

A.—I am unable to say or give any opinion on that point, some days did elapse, but I am unable to say how long.

Q.—Are you sure that more than two days (Saturday and Sunday) elapsed?

A.—There were the days intervening between the 11th and 14th.

Q.—You have stated that I said before the Court of Enquiry, that my accounts were mixed up with those of the Commander-in-Chief. Are you sure that I did not mean simply that in moving from His Excellency's. to Major Innes' house, my papers and books, not my figured accounts, had become mixed up with his?

A.—I am quite unable to say what Captain Jervis meant. I have already stated what impression his words left upon me.

Q.—Did I not tell you that as all my previous explanations had been received with contumely, I was unwilling to offer any further explanation, unless you would assure me that it would be received in the spirit in which it was made?

A.—I cannot give a distinct answer to that question, although I believe that Captain Jervis wished me to give him some assurance of that sort, however as I was entirely acting on my own responsibility in the matter, it must be apparent, it was out of my power to do so. I was simply acting in the light of a friend.

Q.—Is this the letter you wrote to me at the time, supplementary to your advice?

A.—I think I wrote a note to this effect, it is the substance of the letter I wrote [letter dated 12th May from Colonel Stewart, was read out.]

Q.—Before the new charges were brought against me, had I, at the Court of Enquiry, received the slightest intimation that further charges would be preferred against me, and were not those charges as unexpected by the Court as by myself?

A.—I can answer for myself that I knew nothing about the charges produced on the 14th, when I gave Captain Jervis the advice referred to.

Q.—What were the charges on which I was arrested?

A.—Captain Jervis was arrested by order of the Commander-in-Chief, on a Memo. written by His Excellency which was read out to him.

PRISONER.—In the memo: referred to, His Excellency bases his charges partly on the direct charges brought before, and on the Finding of the Court of Enquiry, have you any objection to state what the Finding was, which thus forms part of the basis of the charges against me?

COURT.—It is quite optional for the witness to reply or not.

DEPUTY JUDGE ADVOCATE.—It is not for witness to reply, but for the Court to decide whether the question is to be answered.

PRISONER.—I submit that one of the charges has been founded on the "Finding" of the Court of Enquiry.

PROSECUTOR.—I submit that witness cannot be examined on the "Finding" of the Court of Enquiry, a privileged document that cannot be produced.

Court closed.—Court disallowed, the question.

Q.—Is there any law or regulation requiring an officer to give up his sword, after he has been put in arrest?

A.—I am not aware that there is either a law or regulation on the subject.

Q.—Did I not say, when you asked me for my sword, that I would give it up, if you would show me the authority, on which you asked for it?

A.—I think he did say so.

Q.—You stated in your examination-in-Chief, that you did not take my sword when you put me under arrest. Why did you not do so?

A.—Because I forgot it.

Q.—Have you ever heard of a case, in which an officer placed under close arrest for having refused to give up his sword, has been held by His Royal Highness the Commander-in-Chief in England to have been justified in that refusal?

A.—I have no knowledge of such a case.

Q.—Can you say, why such a long interval was allowed to elapse between the date of my being put under arrest and the production of the charge against me, for refusing to give up my sword?

A.—The omission was brought to my notice, the morning I placed Captain Jervis in arrest, by one of the officers who accompanied me. I was in a hurry to get to office, for some reason, I don't know why, and I remarked I could get the sword at any time. I think a day or two after that, I went to Captain Jervis' quarters, for the purpose of asking him to give up his sword, he was not at home. I believe I went a second time to his quarters for the same purpose; on that occasion he was not at home. I again wrote to him a private note, which I presume Captain Jervis can produce; but it was to the effect, that I wished to get his sword: Captain Jervis did not answer my note. After this an official communication was made to him by the Adjutant General, which resulted in my going to his quarters on 9th June: what happened on that day, I have already stated to the Court.

Cross examination closed.

Re-examination by Prosecutor.

Q.—What were the exact words used by the prisoner on the 14th May, when he said his accounts were mixed up with the Commander-in-Chief's?

A.—Captain Jervis said, his accounts, papers, and everything, were mixed up with the Commander-in-Chief's, I cannot give his exact words.

Q.—Do you understand it to be a custom of the service, for an officer to give up his sword, when placed under arrest?

A.—Yes, I think it is the invariable custom: I have only placed in arrest once before, and on that occasion I remember taking his sword.

Q.—When the prisoner said he would give up his sword, if you would give up the authority for demanding it: what reply did you make?

A.—I said I was acting under the authority of the Commander-in-Chief but I had no other authority.

PRISONER.—Major P. R. Innes sworn and examined.

Q.—Were you present on the 9th June last when Colonel Stewart demanded Captain Jervis' sword, be being under arrest at the time?

A.—Yes, I was.

Q.—Relate what took place.

A.—At the time when I came into the veranda where Colonel Stewart was standing with Captain Jervis, I was not aware that Colonel Stewart had demanded Captain Jervis' sword, Colonel Stewart told me he had done so, and appealed to me to assist him in inducing Captain Jervis' to give up his sword. I told Captain Jervis that whether he be legally right or wrong in refusing to give his sword, I thought it a great pity that he should do so, as it was only complicating matters. Captain Jervis made me no reply:—but said to Colonel Stewart, here is my witness, now you put the question: Colonel Stewart replied, I have come to take your sword by order of the Commander-in-Chief, Sir W. Mansfield. Tell Sir W. Mansfield in reply, he is already sufficiently in my debt, and therefore I am not inclined to hand him over any more of my property. Colonel Stewart then said:—Then you refuse to obey the order. The prisoner replied. I warn you not to convey back so false a reply: my answer simply is, that I refuse to hand over any portion of my proprerty to Sir W. Mansfield, who is already sufficiently in my debt. I am well aware of the clause in the act, under which Sir W. Mansfield has arrested me: but I know of no order or regulation under which be can place a lien on my property. Colonel Stewart was then

leaving the house, when Captain Jervis told him, that if he desired it, he would fetch pen, ink, and paper, and write his reply: Colonel Stewart replied that he considered that unnecessary, and he left the house.

PRISONER.—I would most earnestly and most respectfully beg the Court would be pleased to grant me the privilege, which has never been denied to any Witness, that of correcting a statement made in the Court.

With reference to the reports of the "Pioneer" newspaper, I would beg permission to state that I have been informed by Mr. Allen, that my Counsel Mr. Tayler, who is unfortunately not here to-day, stated to him that the paper in question, was read, but not recorded, I was not personally aware of this at the time, and I would beg permission to modify to this extent my previous memoradum. Mr. Tayler also informed Mr. Allen, that it did not form part of the proceedings. Mr. Allen himself copied the memo: in Court.

Court adjourned at 4 P.M., till 11 A. M., on Tuesday July 24th 1866.

XXTH DAY'S PROCEEDINGS.

Court re-assembled at 11 A.M., *on Tuesday, July* 24*th* 1866.

Major P. R Innes' examination.—*(continued.)*

Q.—Do you recognise Captain Jervis' handwriting and signature in these papers?

A.—Yes, I do. [The papers read out.]

Prosecutor's examination closed.

Prisoner declined to cross-examine the witness.

PROSECUTOR.—With the permisson of the Court, I will recall a former witness, Baboo Khan, and examine him on a material point, which has arisen since, viz., the arrival of the House Books at Simla.

Baboo Khan, a former witness is recalled and examined on his former oath.

Q.—When the Commander-in-Chief was leaving Calcutta, do you remember the house books being packed up?

A.—Yes, I do.

Q.— Do you remember when these books arrived at Simla?

A.—When the things came from Calcutta, they came on the Hackeries, and the boxes were opened and the books taken out; the large account book was sent away to Captain Jervis' house, and the rest, the smaller books remained in the Commander-in-Chief's house.

Q.—What Chuprassees came in charge of the carts?

A.—Bikari and Hoosheâl, these two Chuprassees came in charge.

Prosecutor's examination closed.

Prisoner declines to cross-examine the witness.

Prosecution closed.

PRISONER.—For my own actual requirements, that is to enable me to put in a list of witnesses, available here and in Calcutta, and to prepare a short preliminary address, pointing out the line of defence, which I propose to take, two days will be sufficient; but as a certain time must be allowed for the Calcutta witnesses to arrive, if only two days are now allowed, the Court will have to adjourn again.

If a week or eight days is now allowed, the sittings can probably go on continuously, until the close of the evidence for the defence; when a second interval will be asked for, to enable me to prepare my final defence.

I leave the matter entirely to the Court.

Court closed.

Court decided to enquire of the prisoner, if a delay of eight days is now allowed, whether he guarantees the presence, then, of his Calcutta witnesses, from arrangements already made: and whether then no question will be raised as to the attendance of any further witnesses.

On the Court being opened, and above notified to Prisoner.

Prisoner put in the following note. No arrangement has as yet been made with the Calcutta witnesses, and it is quite impossible to say, whether at the close of the evidence, which will be adduced, any of the more distant witnesses may be necessary. I am under the impression that they will not; but I cannot, in justice to myself, now, say absolutely, that they may not. If they are, the reason will be submitted for the Court's consideration and decision on the point.

I would add, that if 8 days are allowed, that there is every probability that the Calcutta witnesses will arrive in time to be examined, after the evidence of the Simla witnesses is gone through, as their evidence will probably occupy a week.

Court closed.—Court decided, that the prisoner be allowed 2 days for the purpose required, he will then be required to explain why he had not taken steps before to produce his witnesses: he having been advised by the Judge Advocate, to do so, before the proceedings commenced.

PRISONER.—The witnesses I require from Calcutta, are members of the firms of Monteath and Co., Mackenzie, Lyall, and Co., &c., and till the evidence for the Prosecution was closed, it was

simply impossible for me to say that they would be wanted. Their evidence will refer to collateral points, raisd in the course of the prosecution it self, and my belief was, that it was for the Court and not for me, to adopt the necessary proceedings for summoning them.

To prevent further misunderstanding, I take the liberty of pointing out, that I cannot name the individuals in the Firms; but I conclude, the Deputy Judge Advocate can call on the firms to send up any man acquainted with the facts on which I require evidence, if I state them to the Deputy Judge Advocate.

The Court decided, on this Explanation by the prisoner to give him the option of a delay of 2 or 8 days.

PRISONER.—I will take 8 days.

Court adjourned at 1 P.M., till 11 A.M., on Thursday, 2nd August 1866.

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